SCHEDULE.

Description of the mortgaged property.

FORM No. 6.

Final decree for sale.

(Order XXXIV, rule 5.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges, and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

FORM No. 7.

Preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed.

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(*i*) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(*ii*) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7A.

Preliminary decree for redemption where on default of payment by mortgagor a decree for sale is passed.

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(*i*) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the cost of the suit awarded to the defendant;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any

further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7B.

Preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed.

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(*i*) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. ;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7C.

Preliminary decree for redemption where on default of payment by mortgagor a decree for sale is passed.

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the cost of his suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(*i*) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs. ;

(*ii*) that, on such payment and on payment thereafter before such such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant, shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7D.

Final decree for foreclosure in a redemption suit on default of payment by mortgagor.

(Order XXXIV, rule 8.)

(TITLE.)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of , and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned* [and (*if the plaintiff be in possession of the said mortgaged property*) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

FORM No. 7E.

Final decree for sale in a redemption suit on default of payment by mortgagor.

(Order XXXIV, rule 8.)

(TITLE.)

Upon reading the preliminary decree passed in, this suit on the day of and further orders (if any) dated the day of , and the application of the defendant dated the day of , for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

*Words not required to be deleted.

FORM No. 7F.

Final decree in a suit for foreclosure, sale or redemption where the mortgagor pays the amount of the decree.

(Order XXXIV, rules 3, 5 and 8.)

(TITLE.)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or , the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of ; It is hereby ordered and decreed that:—

(*i*) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor *[or, as the case may be, who has redeemed the property or an acknowledgment of the payment of the amount due in his favour;

(*ii*) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of re-conveyance or acknowledgment in the manner aforesaid,—

(*i*) the said sum of Rs. be paid out of Court to the mortgagee;

(*ii*) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor *[or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor *[or other person making the payment], the said deed of re-conveyance or the acknowledgment in the office of the Sub-Registrar of ; and

(*iii*) *[if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor *[or such person as aforesaid who has made the payment].

FORM No. 8.

Decree against mortgagor personally for balance after the sale of the mortgaged property.

(Order XXXIV, rules 6 and 8A.)

(TITLE.)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs. ;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:—

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

*Words not required to be deleted.

FORM No. 9.

Preliminary decree for foreclosure or sale.

[Plaintiff.....1st Mortgagee,

vs.

Defendant No. 1.....Mortgagor.

Defendant No. 2.....2nd Mortgagee.]

(Order XXXIV, rules 2 and 4.)

(TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(*Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.*)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2* [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—]

3. And it is hereby ordered and decreed as follows :—

(*i*) (*a*) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(*b*) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(*ii*) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (*i*) (*a*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

(*Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.*)

*Words not required to be deleted.

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

(*i*) *[*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale*] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or

(*ii*) *[*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(*iii*) *[*in the case where a sale is ordered under clause 4 (ii) above*] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and

(*iv*) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

(*a*) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

*[(*i*) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] or

*[(*ii*) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;

and (*b*) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

*Words not required to be deleted.

6. And it is hereby further ordered and decreed *[*in the case where a sale is ordered under clause 5 above*]—

(*i*) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(*ii*) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 10.

Preliminary decree for redemption of prior mortgage and foreclosure or sale on subsequent mortgage.

[Plaintiff.....2nd Mortgagee

vs.

Defendant No. 1.....Mortgagor,

Defendant No. 2.....1st Mortgagee.]

(Order XXXIV, rules 2, 4 and 7.)

(TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.

(*Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.*)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff* [or if (there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—].

*Words not required to be deleted.

3. And it is hereby ordered and decreed as follows:—

(*i*) (*a*) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(*b*) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(*ii*) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (*i*) (*a*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(*Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.*)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

(*i*) *[*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale*] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

(*ii*) *[*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court of such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(*iii*) *[*in the case where a sale is ordered under clause 4 (ii) above*] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the

*Words not required to be deleted.

Code of Civil Procedure, 1908; and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(*iv*) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

(*a*) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the defendant No. 2 might have done under clause 4 above*)—

*[(*i*) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property;] or

*[(*ii*) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]

and (*b*) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed (*in the case where a sale is ordered under clause 5 above*)—

(*i*) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the cost of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(*ii*) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

*Words not required to be deleted.

SCHEDULE.

Description of the mortgaged property.

FORM No. 11.

Preliminary decree for sale.

[Plaintiff—Sub or derivative mortgagee

vs.

Defendant No. 1.—Mortgagor.

Defendant No. 2.—Original mortgagee.]

(Order XXXIV, rule 4.)

(TITLE.)

This suit coming on this day, etc. It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows:—

(*i*) that defendant No. 1 do pay into Court on or before the said day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2.

(Similar declarations to be introduced with regard to be amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)

(*ii*) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (*i*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or his suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

(*iii*) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908; and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (*ii*) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property of a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, at the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(*declarations to the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder*).

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

L. GRAHAM,
Secy. to the Govt. of India.

[To be substituted for the errata published in the "Calcutta Gazette," Part V, of the 5th December, 1929.]

LEGISLATIVE DEPARTMENT.

ERRATA.

In Act No. XIX of 1929 as republished in Part V, page 44 of the *Calcutta Gazette* of the 21st November, 1929:

(*i*) in section 1 (*1*) *for* "1929" *read* "1928."

(*ii*) in section 3 *for* "carriage" *read* "marriage."

J. BARTLEY,
Secy. to the Govt. of Bengal.

The Calcutta Gazette

THURSDAY, AUGUST 1, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

REPORT OF THE SPECIAL COMMITTEE.

To

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

In accordance with the Legislative Department Resolution, No. 47-I./29-C. & G., dated the 28th March, 1929 (Appendix A), we, the members of the Committee appointed by the Government of India to examine the provisions of the Indian Sale of Goods Bill, have the honour to submit the following report:—

1. The constitution of the Committee was as follows:—

CHAIRMAN.

The Honourable Sir Brojendra Lal Mitter, Kt., Bar-at-Law, Law Member of the Council of the Governor-General.

MEMBERS.

(1) Mr. D. F. Mulla, C.I.E., M.A., LL.B., Officiating Advocate-General, Bombay.

(2) Mr. M. R. Jayakar, M.A., LL.B., Bar-at-Law, M.L.A.

(3) Mr. Alladi Krishnaswamy Ayyar, Advocate-General, Madras.

Mr. W. T. M. Wright, C.I.E., I.C.S., Joint Secretary and Draftsman to the Government of India, Legislative Department, attended the meetings of the Committee, and Mr. J. R. Dhurandhar, LL.B., Assistant Secretary to the Government of Bombay, Legal Department, acted as Secretary to the Committee.

2. The Committee assembled at Simla on the 29th April, 1929, when its first meeting was held, and continued its deliberations daily until the 9th May, 1929. A Bill to amend and define the law relating to the Sale of Goods, with the notes setting forth the reasons for the proposed amendments, which had already been prepared in the Legislative Department of the Government of India, was placed before us, and formed the basis of our discussions.

3. Before the passing of the Indian Contract Act, 1872, Chapter VII, of which contains the law relating to the sale of goods or moveables, the law on this subject was not only not uniform throughout British India but was also, outside the limits of the original jurisdiction of the High Courts, extremely uncertain in its application. Within the limits of the Presidency-towns, the rules of English law, including those in the Statute of Frauds, were applied, whilst in the mofussil it was doubtful whether the Statute of Frauds was applicable and, as observed by the Indian Law Commissioners in their second Report, the Judge was to a great extent without the guidance of any positive law beyond the rule that his decision should be such as he deemed to be in accordance with "justice, equity and good conscience." To remedy this unsatisfactory state of affairs, the Indian Law Commissioners framed, in their second Report, dated the 28th July, 1866, a set of rules relating to the general law of contracts including therein provisions relating to the sale of moveables. The draft of the Law Commissioners underwent several changes at the hands of the then Law Members, Sir Henry Maine and

Sir James Stephen, and also in the Select Committee of the Indian Legislature. But, as stated by Sir James Stephen himself while presenting the Report of the Select Committee on the Indian Contract Bill, the chapter on the sale of goods, except in regard to the rule as to market overt, represented generally the English law on the subject as it then stood.

4. The rules of English law relating to the sale of goods had grown up mainly out of judicial decisions. Along with the general law of contract, they were the product of many generations and were adapted to the circumstances and exigencies of the times and the dealings of the people. They were, however, largely dominated by the provisions of the Statute of Frauds which was passed in the reign of Charles the Second. The Law Commissioners, as well as those who were ultimately responsible for framing the Indian Contract Act, at once realised that the provisions of the Statute of Frauds, although followed in the Presidency-towns, were not suitable to the conditions prevailing in this country, and that "any law relating to this important subject must at any rate be free from the inexpressible confusion and intricacy which is thrown over every part of that Statute in consequence of its vague language."

5. In 1870, various branches of law were being codified in British India. The main object in view was, in the words of Sir James Stephen, "that of providing a body of law to the Government of the country so expressed that it might be readily understood both by English and Native Government servants without extrinsic help from the English law libraries." What was urgently needed was a guide for the judge or magistrate who had but little legal training, derived little or no assistance from the Bar and worked at a distance from any law library.

6. Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had, and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations. The law relating to the sale of goods appertains mainly to mercantile transactions. There can be no doubt that during the last half-century conditions in this country relating to trade and business have undergone material changes. Methods of business have largely altered and new relations have arisen between man and man. In dealing with these relations, it has been necessary to give recognition to new principles, and the Indian Courts have found that a law enacted more than fifty years ago is entirely inadequate to enable them to deal with these new relations or give effect to the new principles. The result has been that on various occasions the Courts have had to hold that Chapter VII of the Indian Contract Act is not exhaustive, and to import therein analogies from the decisions of the English Courts.

7. The English law relating to the sale of goods which was admittedly the basis of Chapter VII of the Indian Contract Act has itself since 1872 undergone drastic changes, and was finally codified in 1893 by the present Sale of Goods Act (56 & 57 Vict., C. 71), which discards many of the old common law rules upon which Chapter VII of the Indian Act was based, in favour of provisions more suited to modern conditions or more convenient in actual practice.

8. By the Bill referred for our consideration, the law relating particularly to the sale of goods is embodied in a separate enactment, although many of the general principles contained in the Indian Contract Act will continue to be applicable thereto. When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not, and could not pretend to be, a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to the several branches of the law of contract which the Bill did not touch. This hope has never been fulfilled. In later years it was found more convenient to have separate enactments for the several branches of the law of contract, *e.g.*, the Transfer of Property Act, the Negotiable Instruments Act, and the Merchant Shipping Act. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of law relating to contract in separate self-contained enactments; and we hope that the Bill which we attach to our Report may be passed into law at an early date and may be but the first of the series required to complete the task which we have outlined above.

9. The Bill referred to us was mainly based on the English Sale of Goods Act, 1893. This Act has stood the test of nearly thirty-five years of practical application, and in the words of Lord Parker in *re* Parchim (1918) A. C. 157 at pages 160-161, "is a very successful and correct codification of this branch of the mercantile law." As is shown in Appendix B to our Report, most of the Colonies and Overseas Dominions have adopted and re-enacted the Act with only such small variations as have been found necessary to adapt its provisions to local circumstances. It is also remarkable that the Uniform Sales Act, passed in 1906 in the United States of America and adopted in twenty out of fifty-three States and territories, is based very largely on the English Act. These facts constitute striking evidence of the completeness and the universal suitability of its provisions.

10. In mercantile transactions a conflict of laws should, as far as possible, be avoided. Uniformity of law in various countries, particularly in those which have business or trade dealings with one another, is highly convenient and desirable. We, therefore, approve of the proposal to adopt the provisions of the English Sale of Goods Act so far as they are suitable to Indian conditions as the basis for the present Bill, and thus to make the Indian Law relating to the sale of goods as nearly as possible uniform with the law in force in other parts of the British Empire.

11. The provisions of the English Act are far more elaborate and comprehensive than those of Chapter VII of the Indian Contract Act, and in their arrangement the English Act is more logical and methodical. As we have already observed, it has revised and brought up to date the rules of the English Common Law. Moreover, the adoption of the English Act as the basis of the present Bill will enable Indian Courts to interpret its provisions in the light of the decisions of the English Courts.

12. In adopting the provisions of the English Act we have not been unmindful of the needs and exigencies of this country. Wherever it has been found that a rule obtaining in England, such as that relating to market overt, is not suitable to Indian conditions, the rule has been rejected. We have, moreover, carefully scrutinised the provisions of the English Act in the light of the decisions of English Courts since 1893, and where those decisions have shown the provisions of the English Act to be defective or ambiguous, we have attempted to improve upon them. We have also retained several of the provisions of the Indian Contract Act which we consider necessary or useful to meet special conditions existing in India. The Bill as revised by us on the above lines is attached to our Report as Appendix C.

13. A detailed explanation of the various clauses of the Bill is set out in our notes in Appendix D. But we think it desirable to draw attention to the following few points of importance:

(*a*) The present Bill embodies the principle that the question whether a contract for the sale of goods does or does not pass the property in the goods from the buyer to the seller must in all cases be determined by the intention of the parties to the contract. The provisions of Chapter VII of the Indian Contract Act are vague and conflicting on this point. The Bill codifies the rules by which that intention may be ascertained, but the operation of these rules will be displaced by any terms of the contract defining the intention or by any attendant circumstances, including the conduct of the parties, rendering it ascertainable. In following this principle, we have borne in mind that in mercantile matters the certainty of the rule is often of more importance than the substance. If the parties know beforehand what their legal position is, they can provide for their particular wants by express stipulations. Sale, after all, is a consensual contract, and the Bill does not prevent the parties from making any bargain they please. Its object is to lay down clear rules for the cases where the parties have either framed no intention or failed to express it.

(*b*) The distinction between a sale and an agreement to sell, which was not clear in Chapter VII of the Indian Contract Act, has been clearly brought out. This distinction is very necessary to determine the rights and liabilities of the parties to the contract.

(*c*) It is made clear that a contract of sale can be made by mere offer and acceptance. Neither payment nor delivery is necessary for the purpose.

(*d*) Before 1893 the law in England relating to warranties and conditions was in a very confused state. In the Indian Contract Act the word "warranty" has been used in a very vague sense. In some provisions it denotes a condition which would enable a party aggrieved by its breach to repudiate the contract, while in others it enables him to claim damages only. In the Bill this ambiguity has been removed.

(*e*) There is much conflict of decisions in India regarding the meaning section 108 of the Indian Contract Act which relates to sales by ostensible owners. This is to a certain extent due to the obscure phraseology of the section itself. We have tried to remove this obscurity in clauses 27 to 30 of the Bill to simplify the law on the subject.

(*f*) We have elaborated the rules relating to delivery to carriers, stoppage in transit and auction sales.

(*g*) We have anxiously considered the question of the retention of the Illustrations appearing in Chapter VII of the Indian Contract Act and of the insertion of Illustrations to new provisions. Our decision is that the better policy is to forego all Illustrations, leaving the Courts to construe the sections as they stand.

14. In conclusion, we desire to place on record our high sense of obligation to Mr. W. T. M. Wright and Mr. J. R. Dhurandhar, who attended the meetings of the Committee and took part in its deliberations. Mr. Wright rendered us great assistance in drafting the clauses of the Bill and in preparing this Report. Mr. Dhurandhar who acted as Secretary brought to bear upon the work great industry in collecting references and otherwise assisting us in the preparation of our notes.

B. L. MITTER.

SIMLA;
20th June 1929.

D. F. MULLA.

BOMBAY;
11th June 1929.

M. R. JAYAKAR.

BOMBAY;
17th June 1929.

A. KRISHNASWAMI AIYAR.

OOTACAMUND;
11th June 1929.

APPENDIX A.

RESOLUTION.

New Delhi, the 28th March 1929.

No. 47-I/29-C. & G.—The Government of India have had under consideration the desirability of codifying the law relating to the sale of goods in a separate enactment which will replace Chapter VII of the Indian Contract Act, 1872. A preliminary draft Bill has been prepared which the Governor-General in Council has decided to remit to a small Committee of experts before it is introduced in the Indian Legislature. The previous examination of a highly technical piece of legislation of this character by a Committee composed of lawyers of eminence will, he feels assured, command general approval. The Committee will be constituted as follows:—

President.—The Honourable Sir B. L. Mitter, Kt., Bar.-at-Law, Law Member of the Council of the Governor-General.

Members.—Mr. D. F. Mulla, C.I.E., M.A., LL.B., Officiating Advocate-General, Bombay, Mr. M. R. Jayakar, M.L.A., Bar.-at-Law, and Mr. Alladi Krishnaswamy Ayyar, Advocate-General, Madras.

The Committee will meet in Simla by the 29th April, 1929. The Government of India hope to introduce the Bill during the next session of the Indian Legislature.

ORDER.—Ordered that a copy be forwarded to the Governments of Madras and Bombay, the Home, Finance and Commerce Departments, the Advocate-General of Madras, the Advocate-General of Bombay and Mr. M. R. Jayakar for information.

Ordered also that it be published in the Gazette of India.

(Sd.) L. GRAHAM,
Secy. to the Govt. of India.

(Gazette of India, 1929, Part I, page 412.)

APPENDIX B.

Alberta, Sale of Goods Ordinance, Terr. Cons. Ord. 1898, c. 39 (omits section 22.)

Bahamas, Sale of Goods Ordinance, 4 Edw. 7 c. 37 (omits sections 49 (3) and 59, as applicable to Scottish law.)

Barbados, 1895, No. 91 (omits sections 4, 17 and 22).

British Columbia, Rev. St. 1911, c. 203 (has section 4, value 50 dollars; has section 22, but introduces for protection of subsequent buyers, etc., special provisions as to formalities of conditional sales).

British Guiana, Sale of Goods Ordinance, 1913 (Ord. No. 26) (has section 4, value 48 dollars; has section 22, which applies to "goods sold in any public market held under the authority of the Government, or otherwise in accordance with the law, according to the usage of the market;" section 60, sub-section (2), adds to the savings the law of warranty and suretyship).

British Honduras, 1899, No. 14.

Ceylon, 1896, No. 11 (section 4 is applied to *all* contracts for the sale of goods, by omitting words limiting the value; section 22 is omitted).

Gibraltar, 1895, No. 20 (has section 4, value 250 pesetas; omits section 22).

Hong Kong, 1896, No. 7 (has section 4, value 100 dollars; has section 22 and defines market overt).

Isle of Man, 1895, Sale of Goods Act (has section 4, value £5; section 24-Eng. section 22, but is subject to the provisions of section 26 as to revesting of property on conviction where goods are *stolen*).

Jamaica, 1895, No. 12 (omits section 22).

Manitoba, Rev. Stat. 1902, c. 152 (has section 4, value 50 dollars; omits section 22).

New Burnswick, 1919, c. 4.

Newfoundland, 1899, 62, Vict. c. 2 (has section 4, value 50 dollars; omits section 22).

New Zealand, 1895, No. 23, now Sale of Goods Act, 1908, No. 168 (section 24-Eng. section 22, but sub-section (3) enacts that nothing in the Act "shall be construed to create a market overt in New Zealand").

North-West Territories of Canada, Consol. Ord. 1905, c. 39 (has section 4, value 50 dollars; omits section 22; and adopts sections 49 (3) and 59 from Scottish law).

Nova Scotia, Sale of Goods Act, 1910 (has section 4, value 40 dollars; and section 32, sub-section (3), is made to apply to "sea, lake, or river" transit).

Ontario, c. 40, 1920.

Prince Edward Island, 1919, c. 11.

Queensland, 1896, 60 Vict. No. 6 (omits section 22).

Saskatchewan, Sale of Goods Act, Rev. Stat. 1909, c. 147 (has section 4 (50 dollars). The proviso to section 14, sub-section (1) is not adopted, whereas sections 49 (3) (dealing with interest on the price) and 59 (payment into Court) are adopted from Scottish law).

South Australia, 1895, No. 630.

Tasmania, 1896, No. 14 (does not adopt the Scottish law declared in sections 49 (3) and 59; adds in section 31 the words "or warrant" after "writ of *fieri facias*" and before "or other writ." Section 27, sub-section (2) saves the law relating to "cattle").

Trinidad and Tobago, 1895, No. 64 (omits section 22).

Victoria, 1896, No. 1422. (Part I is identical with the English Act, but the Victoria Act has a wider scope and provides for the law relating to consignees, mercantile agents, documents of title to goods, etc.)

Western Australia, 1895, No. 41.

(Benjamin on Sale, pages 196-197, Chalmers' Sale of Goods, pages 157-158, Journal of Comparative Legislation, 3rd Series, Vol. II, p. 79.)

APPENDIX C.

A

BILL

TO

Define and amend the law relating to the sale of goods.

WHEREAS it is expedient to define and amend the law relating to the sale of goods; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Sale of Goods Act, 19 .

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on the day of , 19 .

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "bailee" has the same meaning as in section 148 of the Indian Contract Act, 1872; IX of 1872.

(*2*) "buyer" means a person who buy or agrees to buy goods;

(*3*) "contract of sale" includes an agreement to sell as well as a sale;

(*4*) "delivery" means voluntary transfer of possession from one person to another;

(*5*) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(*6*) "document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or received goods thereby represented;

(*7*) "fault" means wrongful act or default;

(*8*) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(*9*) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and share certificates, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(*10*) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(*11*) "price" means the money consideration for a sale of goods;

(*12*) "property" means the general property in goods, and not merely a special property;

(*13*) "quality of goods" includes their state or condition;

(*14*) "sale" includes a bargain and sale as well as sale and delivery;

(*15*) "seller" means a person who sells or agrees to sell goods;

(*16*) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(*17*) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872, have the meanings assigned to them in that Act. IX of 1872.

Application of provisions of Act IX of 1872.

3. The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts for the sale of goods. IX of 1872.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

4. (*1*) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(*2*) A contract of sale may be absolute or conditional.

(*3*) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(*4*) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

Contract of sale how made.

5. (*1*) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or that the delivery or payment or both shall be postponed.

(*2*) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract.

Existing or future goods.

6. (*1*) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(*2*) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(*3*) Where by a contract of sale the selller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods perishing before making of contract.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell.

8. Where there is an agreement to sell specific goods, the agreement becomes void if, subsequently thereto and before the risk passes to the buyer, the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the contract.

The Price.

Ascertainment of price.

9. (*1*) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(*2*) Where the price is not determined in accordance with the foregoing provisions, the buyer is to pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

10. (*1*) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement becomes void:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he must pay a reasonable price therefor.

(*2*) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Condition and warranty.

12. (*1*) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(*2*) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(*3*) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods.

(*4*) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. The stipulation may be a condition, though called a warranty in the contract.

When condition to be treated as warranty.

13. (*1*) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(*2*) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(*3*) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, etc.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality or fitness.

16. Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(*1*) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are brought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition—

(a) that the bulk shall correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample;

CHAPTER III.

EFFECTS OF THE CONTRACT.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when seller has to do anything thereto in order to ascertain price.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Sale of unascertained goods and appropriation.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Delivery of carrier.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Goods sent on approval or "on sale or return".

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

Reservation of right of disposal.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain condtions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property.

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Sale by person not the owner.

27. Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that where an agent, having in the customary course of his business authority to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods, is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale of the goods made by him shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by persons having voidable title.

29. Where the seller of goods has a voidable title thereto but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods if he buys them in good faith and without notice as to the seller's defect of title and if the circumstances rendering the contract voidable have not amounted to an offence committed by the seller or a person through or under whom the seller claims.

Seller or buyer in possession after sale.

30. (*1*) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(*2*) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

PERFORMANCE OF THE CONTRACT.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery.

36. (*1*) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

(*2*) Apart from any contract, express or implied, as to place of delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are manufactured or produced.

(*3*) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(*4*) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are send by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods delivered at distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not wihtin a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

"Unpaid seller" defined.

45. (*1*) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(*a*) when the whole of the price has not been paid or tendered;

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(*2*) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

46. (*1*) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a*) a lien on the goods for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(*c*) a right of resale as limited by this Act.

(*2*) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

Seller's lien.

47. (*1*) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a*) where the goods have been sold without any stipulation as to credit;

(*b*) where the goods have been sold on credit, but the term of credit has expired;

(*c*) where the buyer becomes insolvent.

(*2*) The seller may exercise his right of lien notwithstanding he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien.

49. (*1*) The unpaid seller of goods loses his lien thereon—

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) when the buyer or his agent lawfully obtains possession of the goods;

(*c*) by waiver thereof.

(*2*) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

Right of stoppage in transit.

50. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Duration of transit.

51. (*1*) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(*2*) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(*3*) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(*4*) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(*5*) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(*6*) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(*7*) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transit is effected.

52. (*1*) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(*2*) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale.

Effect of sub-sale or pledge by buyer.

53. (*1*) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of

lien or stoppage in transit is defeated, and, if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may required the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise of an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

Remedies of the seller.

Suit for price.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance.

58. Subject to the provisions of Chapter II of the Specific Relief Act, 1877, in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for breach of warranty.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Repudiation of contract before due date.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Interest by way of damages and special damages.

61. (*1*) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(*2*) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(*b*) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

Exclusion of implied terms and conditions.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Reasonable time a question of fact.

63. Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Auction sale.

64. In the case of a sale by auction—

(*1*) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(*2*) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(*3*) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(*4*) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(*5*) the sale may be notified to be subject to a reserved or upset price;

(*6*) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Repeal.

65. Sections 76 to 123 of the Indian Contract Act, 1872, are hereby repealed. IX of 1872.

Savings.

66. (*1*) Nothing in this Act or in any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(*c*) anything done or suffered before the commencement of this Act, or

(*d*) any enactment relating to the sale of goods which is not expressly repealed by this Act, or

(*e*) any rule of law not inconsistent with this Act.

(*2*) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Act.

(*3*) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

APPENDIX D.

NOTES ON CLAUSES.

Clause 2.—The definitions in this clause have been taken from section 62 of the English Sale of Goods Act, 1893 (56 & 57 Vict. C. 71). In regard to the definition of the term "document of title" the term has been used in sections 102, 103, 108 and 178 of the Indian Contract Act, 1872. It has been held by the Privy Council in *Ramdas* vs. *Amar Chand* 43 I. A. 164 that it has the same meaning as it had in the Indian Factors Act of 1840 which is wider than the definition in the English Act. We have therefore enlarged the definition accordingly.

In the definition of the term "goods" we have included shares. In *Fazal* vs. *Mangal Das* I. L. R. 46, Bom. 489, it was held that the term "goods" as used in Chapter VII of the Indian Act, 1872, has a much wider sense than it has in the English Law, and includes share certificates. The term "future goods" although not very happy has been held to be convenient. [*Ajello* vs. *Worsley* (1898), 1 Ch. at p. 280.] We have therefore retained it and defined it on the lines of the English Act with the addition of the words "or produced" to include agricultural products specifically.

We have added the definition of the word "price" as used in the English Act.

Clause 3.—Though the chapter on the sale of goods has been taken out of the Indian Contract Act, the Bill will form part of the general law of contract. We have therefore provided in this clause that the general provisions of the Indian Contract Act shall continue to be applicable to contracts of sale of goods in so far as they are not inconsistent with the special provisions of the Bill.

Clause 4.—Considerable confusion has been caused by the definition of sale in section 77 read with section 78 of the Indian Act of which the marginal note is "Sale how effected". The last two paragraphs of section 78 contain a good many words which are unnecessary and only create confusion.

It will be observed from the definition of "contract of sale" in the English Act that it comprises two things, namely, (*i*) sale, and (*ii*) agreement to sell. It may perhaps be said that, having regard to the sharp distinction that has been maintained in the Indian Act between an agreement and a contract [*see* section 2, sub-sections (*e*) and (*h*) and section 10], it is not desirable to use the expression "agreement to sell". The answer to that is that as the chapter of the sale of goods now stands in the Indian Act, the expression "sale", "contract of sale", conract for the sale of goods and "agreement for sale" are used more or less indiscriminately. The intention appears to be to maintain a distinction between "sale" on the one hand and "contract of sale" on the other, corresponding with "agreement to sell" in the English Act. The point, however, is that the expression "agreement for sale" is used at least twice in the chapter, namely, in sections 83 and 85 and no confusion has ever been created.

The expressions used in the present clause and in subsequent clauses of this Bill are "transfer, or passing, of property in goods". The Indian Act uses several expressions in the different sections of the chapter on the sale of goods, namely, "transfer of ownership", "completion of sale", and "passing of property" indiscriminately in more or less the same sense. We think it is desirable to use the expression "transfer" (or "passing") "of property" throughout the Bill.

The meaning of the word "property" is made clear in clause 2 (*12*).

Clause 5.—Sub-clause (*1*) of this clause is based on the general principle laid down in the Indian Act that a contract is effected by an offer and an acceptance accompanied by consideration. The corresponding section in the Indian Act is section 78. It refers to the making of a sale as well as to the passing of property. In our opinion it is desirable to keep the two matters separate. So far as the making of a sale is concerned, section 78 seems to be open to the following objections:—

(*i*) Although by its marginal note it purports to lay down a rule relating to sales generally, it deals only with the simplest case of a sale of ascertained goods for a fixed price.

(*ii*) After stating that a sale can be effected by offer and acceptance of goods for a price and *vice versa*, it goes on to enumerate various circumstances which would constitute a sale. This enumeration or description is neither accurate nor complete, and should not find a place in a provision which is of a declaratory nature.

(*iii*) The acceptance referred to in the section is the acceptance of goods as distinguished from the acceptance of the offer. The expression 'acceptance' used in connection with goods has a special meaning of its own which is given in clause 42 of this Bill.

(*iv*) The section states that part delivery along with offer and acceptance is sufficient to constitute a sale. But, in order to effect a complete sale, part delivery must be made in course of delivery of the whole. The provisions of this section had therefore to be read subject to the provisions of section 92 [I. L. R. 15, Cal. 1, at page 6].

The latter part of the section which refers to the passing of property will be considered when the provisions relating to the effects of a contract are dealt with in our comments upon Chapter III of this Bill.

Sub-clause (*2*) of this clause is based on section 10 (*2*) of the Indian Act and section 3 of the English Act. Having regard to the words "subject to the provisions of any law for the time being in force", we have omitted the proviso relating to corporations which occurs in the English section.

Clause 6.—This clause is taken from section 5 of the English Act.

As to sub-clause (*2*), reference may be made to sections 31 to 36 of the Indian Act which deal with contingent contracts. Sub-clause (*3*) makes it clear that a contract for the sale of future goods operates as an agreement to sell. The rules embodied in this clause have been well recognised in English Law (*vide* Benjamin on Sale, p. 159, Ed. 6th), and have also been adopted in sections 87 and 88 of the Indian Act. Sections 87 and 88 do not, however, contain a complete statement of law on the subject. We think that

it is desirable to lay down on the lines of the English section a distinct rule declaring that a contract which purports to effect a present sale of future goods operates only as an agreement to sell. The question regarding the transfer of property in such cases should be dealt with separately (*vide* clause 20).

Clause 7.—This clause follows section 6 of the English Act. The rule is based either on the ground of mutual mistake or on the ground of impossibility of performance (Chalmers' Sale of Goods, p. 30, Ed. 10th). Although in Chapter VII of the Indian Act there is no specific provision corresponding to this clause, the general principle underlying it is provided for in section 20 [*vide Illustrations* (*a*) and (*b*) to that section]. Sections 6 and 7 of the English Act use the words 'perish' and 'perished'. In regard to those words some writers observe that goods must be deemed to have 'perished' not only if they are physically destroyed, but also if they have ceased to exist in a commercial sense, that is, if their merchantable character, as such, has been lost [*vide* Benjamin on Sale, p. 161; Halsbury's Laws of England, Vol. 25, p. 145]. Chalmers in his book on the Sale of Goods is inclined to think that in such cases the only question is whether the article has been so far destroyed as no longer to answer the description of it given by the contract (p. 30). It, however, appears that the cases relied upon for giving to the term 'perish' an extended meaning in the sense of deterioration in merchantable quality were not decided with reference to section 6 or section 7 of the English Act. The word 'perishable' occurs also in section 48 of the English Act, which has been adopted in the present Bill (*vide* clause 54). The writers mentioned above seem to be of opinion that with reference to that section also the goods will be considered as of a perishable nature, not only when they are such as to deteriorate physically by being kept, but also when they are such as to be subject to deterioration in a commercial sense, so as to be likely to become unmerchantable as such [Benjamin on Sale, p. 1085, Halsbury's Laws of England, Vol. 25, p. 264]. Although there is no direct authority on the point, there seems to be a strong opinion in favour of the view that the import of the word 'perish' is not to be restricted to mere physical destruction. We agree in that opinion and have accordingly made it clear that the goods must have been either physically destroyed or so damaged as not to answer the description given in the contract. With this alteration we have adopted the provisions of section 6 of the English Act.

The question whether by reason of the partial loss of the goods they should be deemed to have ceased to exist within the meaning of this clause so as to make the contract void would depend on the circumstances of each case. The point in such a case would be whether the contract was entire or divisible [*cf. Barrow v. Phillip* (1929) 1 K. B. 574].

In the course of the discussions on clauses 7 and 8, a point was raised that inasmuch as under the terms of the two clauses the agreement is either void or the contract becomes void, these clauses might have the effect of rendering void every kind of contract relating to the sale of goods, lost or not lost, and that they might have the effect of hitting at c. i. f. contracts. It was urged that a c. i. f. contract was also a sale of goods, though to be performed by the tender of documents, and such a contract might not be saved even by the terms of clause 62 of this Bill corresponding to section 55 of the English Act. We, however, think that clause 62 is comprehensive enough in its terms and that c. i. f. contracts would be saved by the clause. We are fortified in our conclusion by the opinion of Mr. Chalmers on page 31 of his commentary on the Sale of Goods Act.

Clause 8.—This clause relates to the impossibility of performance arising after the contract is made and is based on section 7 of the English Act. It is true that Chapter VII of the Indian Act does not contain a specific provision on the point. But the principle is well established and underlies section 56 of the Indian Act. We think it is desirable that it should be included in the present Bill as a specific provision. For the reasons stated in the note to the preceding clause, this clause has been framed to cover the case of goods which are so far damaged as not to answer the description given by the contract. The words 'the agreement is avoided' occurring in section 7 of the English Act are ambiguous. A question might arise by whom the agreement is to be avoided. We have, therefore, substituted the words 'the agreement becomes void' for those words.

Clause 9.—This clause is based on section 8 of the English Act. Section 89 of the Indian Act, which corresponds to that section, is not so comprehensive as the English section. It merely contains the provision which is enacted in sub-section (*2*) of the English section. The principle in sub-section (*1*) of the English Act is left to be inferred from section 78. We prefer to adopt the arrangement of the English section.

Clause 10.—This clause is a corollary to the preceding clause. It is not uncommon for the parties to agree that the price of the goods will be fixed by valuers appointed by them. In such cases they are bound by the bargain, and the price so fixed is as much part of the contract as if fixed by themselves. But it is essential for the formation of the contract that the price should be fixed in accordance with this agreement, and if the parties appointed as valuers fail or refuse to act, the agreement becomes void [Benjamin on Sale, p. 169; Halsbury's Laws of England, Vol. 25, p. 148]. This principle is provided for in section 9 of the English Act and has been reproduced in this clause.

Clause 11.—This clause is based on section 10 of the English Act. The principle underlying that section is to be found in section 55 of the Indian Act. In our opinion the present Bill should contain a specific provision on the point. As the General Clauses Act, 1897, contains a definition of the word 'month', sub-section (*2*) of the English section has been omitted.

Clause 12.—The English Act does not give any definition of the word "condition". The English Act is one of 1893, and it was drafted

about four years prior to that date. At that time the English Law as to conditions and warranties was in a state of considerable confusion. Since the enactment of the English Act in 1893, there have been a large number of cases on conditions and warranties. We have ventured to define the expression "a condition". The material part of the definition consists in the use of the word "essential", and we think that the English decisions since 1896 bear out this view. [See Fletcher Moulton's L. J.'s dissenting judgment in *Wallis* v. *Pratt* (1910) 2 K. B. 1003 at page 1012 afterwards approved by the House of Lords in (1911) A. C. 394.] The expression "condition" is not used in the Indian Act at all. On this part of the law the Indian Act follows mainly the Scottish Law. This is clear from the provisions of section 118 of the Indian Act, which corresponds exactly to the Scottish Law which is set out in the English Act, section 11 (*2*). The reason why the expression "condition" was not used in the Indian Act, is probably to be found in the very uncertain state of the law at that time.

There are many subdivisions of conditions in English Law, and one of them is a division into (1) conditions precedent, and (2) concurrent conditions. Concurrent conditions are the same as reciprocal conditions and they are dealt with in the Indian Act under the head "Performance of reciprocal promises" in sections 51 to 58.

Conditions are also divided into:—

(1) "Promissory condition", and

(2) "Contingent conditions".

Contingent conditions are dealt with in the Indian Act under the head "Contingent Contracts" in sections 31 to 36.

It may be observed that so far as the Scottish Law is concerned, it is far behind the English Law. No doubt it clears many knotty points which arise in this branch of the law. But it is not suited to the modern requirements of commerce. Under the Scottish Law a buyer would be entitled to reject goods as on a breach of a condition in many cases in which under the English Law he would be entitled only to damages as on a breach of warranty.

The definition of "warranty" in the English Act is borrowed from the notes to *Cutter* v. *Powell*, 2 Smith's Leading Cases, 7th Ed., page 30.

As regards the definition of the term "condition", we have borrowed the word "essential" from the classical judgment of Williams, J., in *Behn* v. *Burness* (1863) 32 L. J. Q. B. 204 at page 206 (2).

On referring to Indian decisions, it will be found that in several cases the Courts have embarked on an inquiry whether the word "warranty" used in some of the sections, *e.g.*, section 118 of the Indian Act, is equivalent to "condition", or is used in the same sense as the word "warranty" is used in English Law. It has been held, at least in one case (*Buch* v. *Govardhandas* 24 Bom. L. R. 991), that the word "warranty" in section 118 means a "condition". In other cases, it has been held that the word "warranty" is used in its limited sense. The difficulty has arisen from the fact that the authors of the Indian Act have avoided throughout the use of the word "condition" and have used the expression "warranty" indiscriminately sometimes in the sense of "condition", and sometimes in the sense of "warranty" proper. As to section 118 of the Indian Act, it may be observed that the word "warranty" is there used in the sense of a condition. This is clear from the contents of the section itself. The section refers to unascertained goods, and provides that the buyer may reject the goods if they are not in accordance with the warranty. Now the right of rejection, according to the English Law, can only be exercised where the stipulation is a condition, and not where the stipulation amounts to a warranty only. The section then goes on to say that the buyer may, notwithstanding the breach of the "warranty" (that is to say breach of the condition), accept the goods and may, by giving notice to the seller, claim compensation from him. This means that the buyer may, as provided by section 11 (*1*) (*a*) of the English Act, elect to treat the breach of the condition as a breach of warranty, and may claim compensation from the seller as provided in section 53 of the English Act.

Such being the case, it is desirable that the distinction between "condition" and "warranty" observed in the English Law and reproduced in the English Act should also be introduced into India. By so doing, the Indian Courts will then have the additional advantage of the decisions of the English Courts. It may perhaps be said that difficulties would arise if the word "condition" which has hitherto not been used in the Indian Act, is introduced in the new Act. In practice, however, very few difficulties need arise, regard being had to the fact that almost all stipulations which are conditions according to English Law are specifically dealt with in the several sections of the English Act.

Before concluding this note, we may draw attention to the judgment of Lord Alverstone in *Wallis* v. *Pratt* (1911), A. C. 396, where he said:—

"Prior to that Act, there had been a very great deal of litigation and of discussion as to matters which formed only a ground of warranty and matters which amounted to a condition, and the remedies in the one case and in the other were the subject of a great deal of discussion. * * * * * My Lords, I thought it right to add these few words, because I think it is very important to bear in mind that the rights of people in regard to these matters depend now upon Statute. To a large extent the old law, I will not say, has been swept away, but it has become unnecessary to refer to it."

Clause 13.—Having regard to the conflict which has arisen over the right of the buyer after he has accepted the goods, we have endeavoured to make it clear that once the buyer has accepted the goods, he cannot reject them on any ground. If there be a breach

of condition disclosed for instance on subsequent inspection of the goods he can treat the breach as a breach of warranty only and not as a breach of condition. The word "acceptance" has been explained in clauses 41 and 42. Clause 13 (*1*) and clause 40 of the Bill take the place of section 118 of the Indian Act. Clause 13 (*2*) takes the place of section 117 of the Indian Act.

Clause 14.—Section 109 of the Indian Act implies that a stipulation regarding title is merely a warranty and breach of it entitles the buyer, as well as a person claiming under him, to recover loss sustained by him from the seller. The provision is based on a rule which was included in the report of the Law Commissioners and as stated by Sir Henry Maine in the Statement of Objects and Reasons to the Indian Bill was a departure from the English Law. No reasons, however, are given to explain why this departure was made. Before 1893 the English Law on the point was in an unsettled state. It was even held at one time that in a sale of specific goods there was no implied warranty of title and that in the absence of fraud the seller was not liable for a bad title unless there was an express warranty or an equivalent to it by declaration or conduct [*Morley* v. *Attenborough* (1849) 3 Exch. 500 at p. 512 per Baron Parke]. But in *Sims* v. *Marryat* 17 Q. B. 289 at p. 291 Lord Campbell observed in 1851 that "the exceptions have well nigh eaten up the rule". It is unnecessary to trace the course of English Law on this point. But the correct rule has been stated by Benjamin on Sale, p. 685, as follows:—"In regard to conditions as to title, inasmuch as it is an essential element of the contract of sale that there should be a transfer of the absolute or general property in the thing from the seller to the buyer, it would seem naturally to follow that by the very act of selling the chattel the seller undertakes to transfer the property in the thing, and thus warrants his title or ability to sell, and it is believed that such was the true rule of the Common Law." Clause (*1*) of section 12 of the English Act settles the law on the point and embodies the above rule. It provides that in the absence of an express provision there will be an implied condition as to title in a contract of sale. Clause (*2*) of section 12 provides for an implied warranty of quiet possession and clause (*3*) for freedom from incumbrances. These provisions are absent from the Indian Act. But it appears that the laws of modern civilized countries recognize such warranties (*vide* Benjamin on Sale, p. 694, and Chalmers on Sale of Goods, p. 44. In our opinion, therefore, the provisions of section 12 of the English Act should be adopted in India.

This clause gives larger rights to the buyer than what he had under section 109 of the Indian Act. In regard to the 'persons claiming under him', who are allowed by section 109 to proceed against the original seller, we do not think that any specific provision is necessary. Such persons will either be assignees or sub-buyers from the buyer. Their rights against their own seller will be governed by this section, but as against the original seller will depend on the general law.

Clause 15.—Section 113 of the Indian Act deals with sale by description. In the first place, however, the word 'denomination' used in the section is not a happy expression and is rarely used nowadays. Further, there is no doubt that the word 'warranty' used in the section is used in the sense of 'condition', for where there is a contract for the sale of goods by description, in other words where goods are sold as being of a certain denomination, there is not the slightest doubt that it is a condition precedent that goods should be of the contract description or contract denomination. Even in an old case decided in 1838 *Chanter* v. *Hopkins* [4 M. & W. 399] Lord Abinger, C. B., pointed out that in a contract for sale by description failure to supply the thing answering the description is no breach of warranty, but a non-compliance with or non-performance of the contract itself. There is also no reason for restricting the provisions of the section to the sale of goods which have a commercial denomination [*Dowes* v. *Shand* (1877) 2 Appeal Cases 455]. It is difficult to understand the import of the explanation to section 113. An express warranty would on general principles negative an implied warranty inconsistent with it. In any case the proposition which the explanation purports to lay down seems to be in conflict with the decision of the House of Lords in *Wallis* v. *Pratt* (1911) A. C. 394. In our opinion section 13 of the English Act lays down comprehensively the law on the point. The first part of the section which provides that the goods shall correspond with the description is, as stated by Chalmers, based on a principle which is universal (Chalmers' Sale of Goods, p. 45). The proposition stated in the second part of the section that it is not sufficient that the bulk of the goods should correspond with the sample has been recognised in *Illustration* (*b*) to section 113 of the Indian Act. We, therefore, think that it is desirable to adopt the provisions of section 13 of the English Act in place of section 113 of the Indian Act.

Clause 16.—This clause deals with implied conditions as to quality or fitness, and is based on section 14 of the English Act. Subsection (*1*) is based upon the judgment of Cockburn C. J. in *Bigge* v. *Parkinson* (1862) 31 L. J. Exch. 301. In that case the learned Chief Justice said as follows:—

"When a buyer buys a specific article, the rule 'Caveat Emptor' applies, but where the buyer orders goods to be supplied and trusts to the judgment of the seller to select the goods which shall be applicable for the purpose for which they are intended, which is known to both the parties, though there is no express stipulation that they shall be fit for the purpose, there is an implied warranty that they are fit for that purpose. There is no reason why such a warranty should not be implied in the case of a sale of provisions".

Section 114 of the Indian Act is based on this principle. But the provisions of that section appear to have a narrower scope than clause (*1*) of section 14 of the English Act which has been followed in drafting the present clause.

Sub-section (*1*) also makes it clear that it is immaterial whether the seller is a manufacturer or producer or not. Thus it clears up the doubt which was raised by the decision in *Parkinson* v. *Lee* (1802) 2 East 314. In that case it was held that the seller who was not a manufacturer was not liable for a latent defect. But this decision is no longer good law [*vide* Chalmers on Sale of Goods, p. 54, and Pollock and Mulla's Contract Act, p. 540 f. n. (2)]. The proviso to sub-section (*1*) enacts the provisions in section 115 of the Indian Act.

The proposition stated in sub-section (*2*) has been well established in England [*Jones* v. *Just* (1868) L. R. 3 Q. B. 197] and has been recognised also in India in two cases from Madras in which it was held that where goods were sold by description, there was an implied warranty that the goods should be of merchantable quality [*Peer Mohamed* v. *Dalooram* (1918) 35 Mad. L. J. 180 and *Malli & Co.* v. *R. V. A. Firm* (1922) 43 Mad. L. J. 208].

Sub-section (*3*) re-enacts the provisions of section 110 of the Indian Act. In regard to section 111 of the Indian Act it may be observed that the trend of recent decisions does not recognize any distinction between provisions and other goods. [*Emerton* v. *Mathews* (1862) 31 L. J. Ex. 139, *Smith* v. *Baker* (1878) 40 L. T. 1 N. S. 261. *See* also *Wallis* v. *Russell* (1902) 2 Ir. R. 585 at 611.] There is, therefore, no reason to retain the provision in section 111 of the Indian Act.

Clause 17.—This clause relates to sale by sample. Although old text writers were inclined to the view that the term that " bulk shall correspond with sample " is a warranty collateral to the contract, Abbott C. J. held that the buyer was entitled to *reject* the commodity, if it did not correspond with the sample [*Parker* v. *Palmer* (1821) 4 B. & Ald. 387]. Benjamin after reviewing all the cases observes that this so-called warranty was even at Common Law really a condition (Benjamin on Sale, p. 736). The buyer is also entitled to have reasonable facilities for inspecting the bulk independently of any local or trade usage to that effect [*Larymer* v. *Smith*, (1822) 1 B. & C. 1]; and if there is any latent defect in the sample, *i.e.*, a defect not discernible by the ordinary examination of a prudent buyer which if present in the bulk would render the bulk unmerchantable, the sample is to be taken as if free from it [*Heilbut* v. *Hickson* (1872) 7 C. P. 438]. These rules have now been embodied in section 15 of the English Act. Section 112 of the Indian Act refers only to the right of the buyer to reject the goods if the bulk does not correspond with the sample. The use of the word " warranty " in the section is also misleading. Clause 19 therefore has been drafted on the lines of section 15 of the English Act.

Clause 18.—This clause follows section 16 of the English Act. It provides that property in unascertained goods does not pass till they are ascertained. Sections 79, 80 and 87 of the Indian Act deal with the same point, but as they overlap one another, we have adopted the English section.

Clauses 19—24.—Clause 19 (*1*) and (*2*) follows section 17 of the English Act, while clause 19 (*3*) and clauses 20 to 24, follow section 18. The four rules annexed to section 18 of the English Act are stated in separate clauses 20 to 24. Clause 19 is based on the principle of the English Law that the property may pass by the contract itself, if such be the intention of the parties (Chalmers' Sale of Goods, p. 58). On this point there appears to be conflict of opinion in Indian courts. Dealing with a question of the passing of property Sir William Markby observed: " I think this is not a question to be decided simply upon the construction of the Contract Act, but upon the intention of the parties upon which all questions of this kind ultimately depend " [*Buchanan* v. *Audall* 15 B. L. R. 276 at p. 289]. A contrary view was held by Maclean C. J. in *Brij Coomaree* v. *Salamandar Fire Insurance Co.* [I. L. R. 32 Cal. 816] in which, without referring to Sir William Markby's judgment, the learned Chief Justice held that section 78 of the Indian Act laid down a rule which the parties could not by their arrangement vary. In a recent case the Bombay High Court was of opinion that Maclean C. J.'s view in the above case was unsound [*Amies* v. *Jal*, 25 Bom., L. R. 778]. This conflict is due to the rigid terms of section 78 which fails to state that its provisions will be subject to the intention of the parties.

Section 78 provides that when an offer and acceptance have taken place, the property in the thing does not pass until any one of the following conditions have been complied with:—

(*i*) earnest or tender, payment or part payment of the price, or

(*ii*) delivery or part delivery of the thing, or

(*iii*) an agreement, expressed or implied, for the postponement of delivery or of payment, or of both.

It is, however, clear that neither the payment of the price nor the delivery, either whole or in part, is necessary for the completion of a sale. Section 89 of the Indian Act shows that not only there is no necessity for such payment, but that the price need not even be fixed. As far back as 1833 it was stated in England that the sale of a specific chattel passes the property in it to the vendee without delivery [*Dixon* v. *Yates*, 5 B. & Ad. 313 at p. 346]. The last paragraph in section 78 regarding the agreement about the postponement of the payment of price or delivery has been held to imply that it restores the old English common law rule. Cunningham and Shepherd are of opinion that it revives the necessity for an agreement to postpone payment or delivery in cases where there is neither payment, tender, earnest or delivery (p. 316, Ed. II). Pollock and Mulla are of opinion that the wording of the last paragraph does not show how readily an agreement to give credit is to be inferred (p. 449). Section 78, therefore, lays down a rule which is vague and indefinite.

The passing or transfer of property constitutes the most important element in the law relating to contracts for the sale of goods. In mercantile contracts the certainty of the rule is often of more importance than the substance of the rule [*Lockyer* v. *Offley* I. T. R.

259]. In our opinion it is desirable to follow the clear and definite rule recognized in English Law that unless a contrary intention appears by the contract, the contract itself is sufficient to pass the property in the goods sold. That rule is laid down in section 17 of the English Act and is adopted in clause 19 (*1*) and (*2*).

The parties, no doubt, may make any bargain they like and the law will give effect to it. When the parties express their intention clearly no difficulty arises. The contract may pass the property at once, or at a future time or contingently on the performance of some condition. But in many cases the parties either form no intention on the point or fail to express it. To meet such cases the courts have worked out a series of definite rules for determining when the property is to be deemed to pass according to the imputed intention of the parties. These rules have been reproduced in section 18 of the English Act (Chalmers on Sale of Goods, pp. 9 and 10) and they have been adopted in clauses 20 to 24.

Clause 19 (*3*) states the general proposition that, unless a different intention appears, the property passes in accordance with rules mentioned in clauses 20 to 24. Clause 20 makes it clear that in the case of an unconditional contract for the sale of specified goods, the payment of the price or the delivery of the goods is not necessary for passing the property. Clause 21 following rule 3 in section 18 provides that the property does not pass until the goods are put in a deliverable state. The same principle is laid down in section 80 of the Indian Act. Clause 22 embodies rule 4 in section 18 of the English Act and corresponds to section 81 of the Indian Act. Clause 23 (*1*) following rule 5 of the English section provides for a case of unascertained or future goods sold by description. This sub-clause corresponds to section 83 of the Indian Act. Section 84 of the Indian Act contains a proposition which appears to be subordinate to the principle laid down in section 83, and it is rather difficult to see why it was embodied in a separate section. Sub-clause (*2*) of clause 25 which relates to delivery to a carrier is based on rule 5 (2) of section 18 of the English Act. The principle has been recognised in Indian Law (*see* Pollock and Mulla's Contract Act, pp. 472-473, *Ford Automobiles Co.* v. *Delhi Motor Co.* 24 Bom. L. R. 1146).

Clause 24 relates to 'sale on approval' and what is called in England 'sale or return'. Rule 4 of section 18 of the English Act relates to that subject. When goods are sent on approval, the accepted rule is that there is not generally a completed sale until the buyer has—

(*a*) signified his approval, which may be either expressly or by dealing with the goods as owner; or

(*b*) kept the goods until the lapse of the prescribed or a reasonable time without giving notice of rejection; or

(*c*) made return impossible by his own act or default, as by letting the goods be destroyed or spoilt.

(Pollock and Mulla's Contract Act, p. 452). The above rule has been embodied in rule 4 of section 18 of the English Act and we propose to follow it. So far as the Indian Act is concerned, the principle has been referred to in *Illustration* (*b*) to section 78. In our opinion such an important principle should not be relegated to an illustration, but should be embodied in a specific clause.

We also propose to omit section 85 of the Indian Act. The rule stated therein is a rule of intention and depends on the question whether the contract is severable or non-severable. [Halsbury's Laws of England, Vol. 25, p. 175].

Clause 25.—There are no separate provisions in the Indian Act corresponding to this clause. Sub-clause (*2*) of clause 23 deals with delivery to a carrier without any reservation of the right of disposal. In this clause the seller's right of disposal or '*jus disponendi*' is dealt with. Sub-clause (*1*) is of general application and is not confined to the cases of carriage by sea, while sub-clauses (*2*) and (*3*) relate to carriage by sea. The proposition laid down by the clause is embodied in section 19 of the English Act and is well recognised in India also [*see* 24 Bom. L. R. 1140].

Clause 26.—Section 86 of the Indian Act seems to lay down as an inflexible rule of law that the risk follows the property. According to the English Common Law it is merely a *primâ facie* rule. There is nothing in the law of England to prevent the parties from agreeing, if they please, that the risk shall pass at some time or on some condition which is not necessarily simultaneous with the passing of property; and thus the ownership may in particular cases be separated from the risk [*Martineau* v. *Kinching* (1872) L. R. 7 Q. B. 496, *The Parchim* (1918) A. C. 167 at p. 168]. Such a case would arise when the parties are at a distance. In our opinion the rule mentioned in section 20 of the English Act, which saves particular agreements and is more comprehensive, should be adopted in India. It also provides for cases where delivery is delayed and where the seller or buyer is acting as a bailee of the goods for the other party. We have adopted the provisions of section 20 of the English Act.

Clauses 27—29.—In England, before the passing of the first three Factors Acts, being the Acts of 1823, 1825 and 1842, a person in possession of goods or documents of title could not dispose of these goods in contravention of his instructions with respect to them except where—

(1) the sale was in market overt;

(2) the owner of the goods was by his conduct precluded from denying the seller's authority to sell; and

(3) the goods were sold under a statutory power of sale.

The Factors Acts referred to above dealt with the powers of factors and mercantile agents entrusted with the possession of goods or documents of title to goods. The joint effect of those Acts was summed up by Blackburn L. J., in *Cole* v. *North Western Bank* (1875), L. R. 10 C. P. 354, at page 372. After

reviewing the history and policy of the Acts, he said:—

"We do not think that the legislature wished to give to all sales and pledges in the ordinary course of business the effect which the common law gives to sales in market overt.....The general rule of law is that where a person is deceived by another into believing he may safely deal with property, he bears the loss, unless he can show that he was misled by the act of the true owner. The legislature seems to us to have wished to make it the law that, where a third person has entrusted goods or the documents of title of goods to an agent who, in the case of such agency, sells or pledges the goods, he should be deemed by that act to have misled any one who *bona fide* deals with the agent, and makes a purchase from or advance to him without notice that he was not authorised to sell or to procure the advance."

It will thus be seen that the provisions of the Factors Acts referred to above were really an extension of the common law rule of estoppel.

Under these Acts, the terms used were simply "person" or "agent" entrusted with the possession of goods, but it was held that the Acts only applied to mercantile transactions, and that the term "person" or "agent" did not include a mere servant or one who had possession of goods for carriage, safe custody, or otherwise as an independent contracting party, but only persons whose employment corresponded to that of some known kind of commercial agent like factors. Thus a wine merchant's clerk who, as such, was possessed of delivery orders, was held not to be an agent within the meaning of the Acts, so as to be able to make a valid pledge in fraud of his master.

Such was the state of the English law when the Indian Law Commissioners drafted the Contract Bill. To turn now to the Indian law on the subject, there were then in force in India two Factors Acts, one of 1840, and the other of 1844. The Indian Factors Act of 1840 was a reproduction of the English Factors Acts of 1823 and 1825. The Indian Factors Act of 1844 was a reproduction of the English Factors Act of 1842. Both the Indian Acts, like the English Acts on which they were based, related only to pledges. The Acts contained no power of sale.

As regards sales by an apparent owner of goods, the Law Commissioners cut the gordian knot by providing in clause 81 as follows:—

"The ownership of goods may be acquired by buying them from any person who is in possession of them, provided that the buyer acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them."

In other words, it was sought to be provided that every place in India should be a market overt. The Select Committee to which the Bill was referred objected to this clause, the ground of objection being substantially that the provision would make British India an asylum for cattle-stealers from Indian States. The clause, after a good deal of controversy, was ultimately moulded in the form in which it now stands in section 108 of the Indian Act.

As to pledges by an apparent owner, the clause as drafted by them ran as follows:—

"A person who is in possession of goods or of any bill of lading, dock warrant, warehouse-keeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents, provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawner is acting improperly."

This clause was retained by the Select Committee and it became subsequently section 178 of the Indian Act.

Referring to the above clauses Sir Henry Maine observed as follows:—

"It cannot be denied that the subject is difficult. We have to consider, on one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bona fide* purchaser would suffer, were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser; and we think that sound policy with respect to the interests of commerce points to the same conclusion.

We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them. Similar provisions have been inserted in accordance, we may observe, with the spirit of the Factors Act—to meet the cases of those who have purchased goods or taken them by way of pledge from persons in possession of any documentary title to the goods, where the circumstances are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell or to pledge the goods."

It is clear from the above observations that the intention was that a buyer should acquire a good title to goods if he bought them from "any person" who was in possession of them, if he acted in good faith. Though that was the intention of the Legislature, the Indian Courts have in some cases construed the word "possession" both in sections 108 and 178 of the Indian Act to mean "juridical possession". In other cases, however, it has been held that the word "possession" is used in its literal meaning and that there is no warrant for qualifying it. (*See Haji Rahimbux* v. *Central Bank*, I. L. R. 56 Cal. 367, where all the cases on the point are reviewed.) The general trend, however, of the decisions is to confine the operation of both the sections to juridical possession and to sales or pledges by persons whose employment corresponded to that of commercial agents like factors. Such

being the state of the authorities, it is desirable that the law both of sales and pledges by apparent owners should be made clear, and this we have attempted to do in clauses 27 to 30 of the Bill. In so doing we have borrowed certain provisions of the English Factors Act, 1889, which repeals the previous Factors Acts. Section 1 of that Act defines a " mercantile agent " as meaning a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods. Section 2 of the Act empowers a mercantile agent to sell, pledge or otherwise dispose of goods or documents of title to goods of which he is in possession with the consent of the owner so as to give to the buyer a good title subject to the limitations mentioned in the section.

In clause 27 of the Bill we have confined the power of sale to mercantile agents only. In confining this power to mercantile agents, we are bringing this law substantially into line with the English law. No doubt sales in market overt are recognised in English law. But the law of market overt has in England ceased to be of any general importance having regard to the large number of limitations, having been placed on such sales by subsequent statistics, We do not think that the principle of market overt should be extended to this country.

We have specifically stated in the clause that a person buying goods from one who is not the owner thereof and who does not sell them with his consent acquires no better title to the goods than the seller had except in the two cases mentioned therein, one being the case of estoppel, and the other the case of a sale by a mercantile agent in possession of goods with the consent of the owner and having authority either to sell goods, or to consign goods for the purpose of sale, etc. Clause 27 is substituted for the first part of section 108 including *Exception* 1. *Exception* 2 of that section is transferred to a separate clause, being clause 28. Clause 29 is substituted for *Exception* 3 to that section on the lines of section 23 of the English Act. We have omitted the second paragraph to *Exception* 3 to section 108 as being unnecessary.

Clause 30.—This clause is new. It provides for the case of a sale by a seller who is in possession of goods sold by him. It is a reproduction of section 25, sub-section (*1*), of the English Act, which again is based to a large extent in section 8, of the English Factors Act, 1889. Before the enactment of section 8 of the English Factors Act, 1889, it was held that if the buyer, for his own convenience, left the goods and documents of title in the hands of the seller, who fraudulently resold or pledged them, he could nevertheless recover the goods from the innocent purchaser or pledgee. Section 8 of the Factors Act was enacted to remove the hardship caused by the common law rule.

Clause 30, sub-clause (*2*), provides for the case of a sale by a buyer obtaining possession of goods with the consent of the seller, where the original sale was one on credit. It is a reproduction of section 25, sub-section (*1*), of the English Act, which again is based to a large extent on section 9 of the English Factors Act, 1889. Before the enactment of section 9 of the English Factors Act, it was held that a sale or pledge of goods or documents of title to goods by the buyer does not defeat the unpaid seller's rights, the reason given being that the buyer was not entrusted with the goods as an agent. Section 9 of the English Factors Act was enacted to remove the hardship caused by the common law rule referred to above. The words " other right of the seller in respect of the goods " in clause (*2*) of the Bill relate *enter alia* to a right which a seller may have to avoid a contract on any of the grounds on which a contract can be avoided.

Sub-section (*2*) of section 25 provides that the delivery or transfer by the buyer in person " shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner." Instead of those words we have substituted, to avoid the use of the expression " mercantile agent," the words " shall have effect as if such lien or right did not exist." The change in the language, we think, does not make any difference in the result.

There was some difference of opinion on the question as to whether the protection to a purchaser from a seller or buyer in possession should be extended also to a purchaser from a mercantile agent acting for the seller or the buyer. The clause, as it stands, is new; it provides for the additional cases in which a buyer may acquire a good title; we have not therefore considered it desirable to extend the protection to a purchaser claiming from a mercantile agent acting for a seller or a buyer. It need hardly be said that no express provision is necessary in regard to a sale effected by a person duly authorised by the seller or the buyer in possession.

Having regard to the changes which we have made in section 108 of the Indian Act, we think it is desirable that section 178 should be amended so as to make it consistent with the provisions of clause 27 of the Bill.

Clause 31.—This clause is based on section 27 of the English Act. Although there is no specific section corresponding to it in the Indian Act, it is implied in section 51. We think a separate section is desirable.

Clause 32.—The general rule is that the obligation of the seller to deliver and that of the buyer to pay are implied concurrent conditions in the nature of mutual conditions precedent, and that neither can enforce the contract against the other without showing performance or offering to perform or averring readiness and willingness to perform his own promise (Benjamin on Sale, pp. 682 and 683). The words ' unless otherwise agreed ' save sales on credit or such special contracts as c. i. f. contracts. The rule has been embodied in section 28 of the English Act and has been adopted in this clause. The principle of this rule is implied in section 51 of the Indian Act.

Clause 33.—This clause provides for the manner in which delivery of goods can be made and corresponds to section 90 of the Indian Act. The words ' which the parties

agree shall be treated as delivery ' have been added to make it clear that delivery may also be made by means of an act or thing which the parties agree shall be treated as a delivery. (Halsbury's Laws of England, Vol. 25, p. 206).

Clause 34.—This clause repeats the provisions of section 92 of the Indian Act. It affirms the English common law rule that the delivery of the part may be delivery of the whole, if it is so intended and agreed, but not otherwise. (Pollock and Mulla's Contract Act, p. 489).

Clause 35.—In this clause the provisions of section 93 of the Indian Act are repeated. It is true that there is no specific provision in the English Act corresponding to it. But the principle seems to have been well recognised in England also. It has been held that in the absence of a contrary agreement, a seller is not bound to send or carry the goods to the buyer. He may leave or place them at the buyer's disposal, so that the latter is able to remove them (Benjamin on Sale, page 783). In the opinion of Chalmers there is nothing in the wording of the English Act to displace this rule [Halsbury's Laws of England, Vol. 25, f. n. (*a*), page 207]. There was some difference of opinion amongst us on the question as to whether the expression " apart from any contract or in the absence of a contract to the contrary " should be substituted for the expression " apart from any express contract," and clauses 5, 36 (*1*) and 62 of the Bill were referred to. We have however retained the expression " apart from any express contract," as the rule enunciated in clause 35 has been in existence since 1872 and has been adopted in actual practice.

Clause 36.—This clause is a combination of section 29 of the English Act and section 94 of the Indian Act. We have omitted the second part of section 29 (*1*) of the English Act and substituted in its place the provisions of section 94 of the Indian Act, adding the words ' 'manufactured or ' before the word ' produced ' in sub-clause (*2*) corresponding with section 94 of the Indian Act.

Sub-clause (*1*) corresponds to sub-section (*1*) of section 29.

The latter part of section 29 (*1*) of the English Act provides that apart from any contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence. Before this provision was made by the English Act, there was no settled rule in England. In the opinion of Chalmers a more definite *primâ facie* rule ought to have been included in the English Act. (Chalmers' Sale of Goods, p. 86). The rule embodied in section 94 has been found to have caused no difficulty in India and we propose to retain it.

Clause 37.—Section 119 of the Indian Act provides for one of the contingencies with regard to the quantity of the goods. Section 30 of the English Act is comprehensive and deals with all possible contingencies which generally occur. We have, therefore, adopted the provisions of the English section.

Clause 38.—The case of instalment deliveries falls under the general provisions embodied in sections 39 and 120 of the Indian Act. As a corollary to the preceding clause, in the absence of a contract, express or implied, a buyer is not bound to accept by instalments the delivery of the goods sold to him. This is provided for in sub-section (*1*) of section 31 of the English Act and we have adopted it in clause 38 (*1*).

It was held in some of the old cases that where a contract provided for delivery by instalments, either expressly or impliedly, the refusal by the seller to deliver or by the buyer to accept or pay a particular instalment was a breach which went to the root of the contract [*Withers* v. *Reynolds* (1831) 2 B. and Ad. 882, *Hoare* v. *Rennie* 29 L. J. Ex. 79, *Honck* v. *Muller* (1881) 7 Q. B. D. 92]. A contrary view was, however, held in other cases [*Jonassahn* v. *Young* (1863) 32 L. J. Q. B. 385, *Simpson* v. *Crippin* (1872) L. R. 8 Q. B. 14, *Freeth* v. *Burr* (1874) L. R. 9 C. P. 208]. The latter view was followed in India in the following cases:—I. L. R. 4 Cal. 252, 9 Mad. 359, 18 Mad. 63, (1914) Punj. Ree No. 63, p. 214. The true rule in such cases is that each case should be judged on its own facts (Chalmers' Sale of Goods, p. 91). Sub-section (*2*) of section 31 of the English Act gives effect to that principle. This sub-section, however, does not contain a full statement of law on the point (Benjamin on Sale, p. 826). It only provides for a defective delivery on the part of a seller. In our opinion the rule ought to apply where the seller omits or refuses to make a delivery. We have, therefore, inserted the words ' no delivery or ' after the words ' the seller makes' in sub-clause (*2*).

Clause 39.—This clause is a combination of section 32 of the English Act and section 91 of the Indian Act. In England it has been well settled for more than a century " that if a tradesman orders goods to be sent by a carrier, though he does not name any carrier, the moment the goods are delivered to the carrier it operates as a delivery to the purchaser " (Pollock and Mulla's Contract Act citing *Dutton* v. *Solomanson* 3 B. & P. 582). It is also well established that it is the seller's duty " to do whatever was necessary to secure the responsibility of the carrier for the safe delivery of the goods, and to put them into such a course of conveyance, as that in the case of a loss the buyer might have his indemnity against the carriers " [*Clarke* v. *Hutchins* (1811) 14 East 475]. These two rules have been embodied in section 91 of the Indian Act and elaborated in section 32 of the English Act. Section 91 of the Indian Act refers to a carrier or a wharfinger also. The reason appears to be that delivery of goods to a carrier or wharfinger was treated as standing on the same footing [*Buckman* v. *Levi* (1813) 3 Camp. 414]. The English section does not refer to a wharfinger. In England there are special statutory provisions relating to wharfingers. As the rule as to wharfingers in section 92 has been in existence since 1872 in India, we consider it desirable to include it in the present clause. In England there has been some difference of opinion regarding the applicability of section 32 (*3*) to f. o. b. contracts. Ballaiche J. in *Wimble*

v. *Rosenberg* (1913), 1 K. B. 279 and Hamilton L. J. in (1913) 3 K. B. 756-57 are of opinion that in view of the use of the word 'sent' in that sub-section it does not apply to f. o. b. contracts. As in f. o. b. contracts a seller is required only to deliver goods on board the ship and thereafter they remain at the risk of the buyer, the two judges mentioned above are of opinion that the goods are not *sent* within the meaning of section 32 (*3*). This view was not shared by the majority of the Bench in the Court of Appeal [*see* observations of Vaughon Williams and Buckley L. J. J. in (1913) 3 K. B., pp. 750-53]. The majority view was followed later on in the Court of Appeal in *Northern Steel Co.* v. *John Butt & Co.* (1917) 33 T. L. R. 316. As the point has not been finally decided by a higher tribunal, we think it is desirable to retain the word 'sent' in sub-clause (*3*).

Clause 40.—This clause is based on section 30 of the English Act. It was pointed out in the course of the discussion that this clause might be deleted, as it might be difficult to work it side by side with the other clauses in the Bill which enjoin a duty on the seller to comply with the conditions as to merchantability, fitness for a particular purpose, and so on. And it was also urged that the principle that the buyer should bear the risk of deterioration incidental to the transit is inconsistent with the fundamental basis of the contract postulated by the section that the seller should undertake the transit, that the delivery should be after the transit and that the seller should take the risk in the meantime. We have, however, decided to retain the section, as it is in accordance with the principles recognised by the common law of England and as the section of the English Act which is based upon the common law has been in force for a long time.

Clause 41.—This clause is based on section 34 of the English Act. The rules stated in both the clauses are common law rules (Benjamin on Sale, pp. 842 and 856). Sub-clause (*1*) enacts the well established proposition that no acceptance can properly be said to have taken place until the buyer has had an opportunity of rejection.

The rule stated in sub-clause (*2*) is a corollary to the above rule and was applied in *Isherwood* v. *Whitmore* (11 M. and W. 347). In that case, the defendants, having received notice that the goods were at a certain wharf ready for delivery on payment of the price, went there, but on application to inspect the goods were shown two closed casks said to contain them. It was held that no sufficient opportunity was given to the buyer to examine the goods and the plaintiff, therefore, had not made a valid offer of delivery. Although there is no section in Chapter VII of the Indian Act laying down the rule, the principle underlying it has been embodied in section 38 (*2*) of that Act. The rule has also been applied by Latham J. in a Bombay case in *Ruttensey* v. *Jamnadas* I. L. R. 6, Bom. 692. The words 'unless otherwise agreed' save special contracts.

Clause 42.—This clause is based on section 35 of the English Act and embodies the common law rule on this point.

Clause 43.—This clause is based on section 36 of the English Act. Although there is no specific provision in the Indian Act laying down the rule stated in the section, the rule has been applied in several cases in India [*Sumer Chand* v. *Ardeshir* (1907) All. W. N. 67, *Buch and Co.* v. *Govardhandas* 24 Bom. L. R. 991].

Clause 44.—This clause is based on section 37 of the English Act. There is no specific provision in the Indian Act on the point, but the rule is based on the remarks of Lord Ellenborough in *Greaves* v. *Ashlin* (1873) 3 Camp. 426 and is a salutary rule of law. The reference to the charge for custody shows that the clause applies to cases in which the property has passed and the buyer neglects to take possession. The proviso to the section saves all the rights of the seller which he is entitled to enforce in case of the repudiation of the contract on the part of the buyer.

Clause 45.—This clause defines an unpaid seller and is based on section 38 of the English Act. There is no similar provision in the Indian Act. One of the rights of an unpaid seller is dealt with in section 95. We think it desirable to define an unpaid seller.

The trend of the decision in England before 1893 was to give rights of an unpaid seller against the goods to any one whose position can be shown to be substantially analogous to that of an ordinary seller (Chalmers' Sale of Goods, p. 102). Sub-clause (*2*) gives effect to that view.

Clause 46.—This clause which is based on section 39 of the English Act declares generally the rights of an unpaid seller. When the property in the goods has passed to the buyer, he has the following rights:—

(1) lien,
(2) stoppage in transit,
(3) right of resale.

This clause groups together in a convenient form the rights of an unpaid seller which are scattered over different sections in the Indian Act. Lien is provided for in sections 95 to 98, stoppage in transit in sections 100 to 106 and resale in section 107.

Sub-clause (*2*) refers to other rights of an unpaid seller where the property has not passed to the buyer.

Clause 47.—This clause is based on section 41 of the English Act and states clearly in what case the seller is entitled to enforce his right of lien. The provisions of this clause are at present embodied in sections 95 to 97 of the Indian Act. The *Explanation* to section 96 which defines an insolvent has been relegated to the interpretation clause of this Bill. Sections 95 to 97, however, are silent regarding the question whether a seller is entitled to exercise his right of lien when he is in possession of the goods as an agent or bailee of the buyer. This question usually arises in cases when the buyer becomes insolvent allowing the goods to remain in possession of the seller. There is no reported decision of any Indian court on this point. The old common law rule was that though the goods may remain in the possession of the seller, yet, if it is agreed between the seller and the buyer that the former's possession shall thenceforth be that of a bailee for the buyer, and not that

of a seller, the right of lien is gone [*Cusack* v. *Robinson* (1861) 30 L. J. Q. B. 261 at p 264]. The lien is only revived if the buyer becomes insolvent [*Townely* v. *Crump* (1835) 4 A. & E. 58]. The common law rule was abrogated in England by section 41 (*2*) of the English Act. This clause is based on the statutory rule adopted in that sub-section.

We do not think it desirable to make any provision relating to equitable titles and have therefore left the matter to be dealt with under the ordinary law of the land.

Clause 48.—This clause follows section 47 of the English Act. The principle is to be found in the *Illustration* to section 106 of the Indian Act.

Clause 49.—Very often a question arises whether the lien of a seller has terminated. There is no express provision in Chapter VII of the Indian Act on the point except such as is implied by section 100. Section 43 of the English Act, following the common law rules, declares when such lien terminates. We consider that these rules should be adopted in the present Bill. Sub-clause (*3*) of the present clause which is based on section 43 (*2*) of the English Act recognises the principle in the following cases, *viz.*:—*Houlditch* v. *Desanges* (1818) 2 Stark 337, *Srivener* v. *Great N. W. Railway* (1871) 19 W. R. 388.

Clause 50.—This clause follows section 44 of the English Act. The principle is recognised in sections 99—106 of the Indian Act.

Clause 51.—This clause is based on section 45 of the English Act. The same principle is embodied in section 100 of the Indian Act, but we prefer to adopt the provisions of the English section.

Clause 52.—This clause is based on section 46 of the English Act. The rules contained in that section correspond to sections 104 and 105 of the Indian Act.

Clause 53.—This clause is based on section 47 of the English Act. It relates to the effect of a sub-sale or a pledge of the goods sold by a buyer before he has paid the price. The first paragraph of sub-clause (*1*) combines the provisions of sections 98 and 101 of the Indian Act; sections 102 and 103 of the Indian Act refer to the transfer of a document of title by the buyer. That provision is contained in the proviso to sub-clause (*1*). The words "having obtained" in section 102 of the Indian Act are not satisfactory. They may include the case where the buyer obtains the document tortiously. To exclude such cases the English provision uses the words "lawfully transferred". The controversy with regard to the meaning of the words "document of title" has been now set at rest by the Privy Council decision in *Ramdas* v. *Amerchand*, I. L. R. 43, I. A. 164. They have the same meaning as they had in the Factors Act of 1840 and include any instrument of title. To make the proviso applicable to warrants and orders for the delivery of goods which are really "issued" and not transferred, we have inserted the word "issued" before the words "lawfully transferred".

In sub-clause (*2*) we have inserted a provision to provide for the right of marshalling by an unpaid seller, when the buyer has transferred the goods by way of a pledge of the documents of title. In such cases an unpaid seller is entitled to require the pledgee to satisfy his claim against the buyer first out of any goods or securities in the hands of the pledgee. The principle of marshalling applies to transactions relating to immoveable property (*see* sections 56 and 81 of the Transfer of Property Act) and is also well recognised in England as being applicable to contracts for the sale of goods [*see* Halsbury, Vol. 25, p. 262, Benjamin on Sale, p. 1059].

Clause 54.—This clause relates to the right of re-sale of an unpaid seller, and is based on section 48 of the English Act. In drafting the clause, we have been guided by the following principles:

1. Before the seller exercises his right of resale, he should give notice to the buyer of his intention to re-sell.

2. In default of such a notice, the seller should have no right to claim any damages for loss on re-sale from the buyer and should be under an obligation to pay over the profits, if any, arising from the re-sale to the purchaser.

3. Whether or not the requisite notice is given, the purchaser from a seller should get an absolute and clear title. This position underlies section 48, clause (*2*), of the English Act, but the point is made clear in the Bill.

In regard to the profits arising from the re-sale, we have thought it right that the seller should be entitled to the profits inasmuch as the re-sale is the result of a breach of contract on the part of the buyer. We have not overlooked the fact that this point is treated as doubtful in English law.

We have not attempted to define the word "perishable" because the English decisions and textbooks make it clear what that word means. *Vide* Halsbury, Vol. 25, p. 264, Benjamin on Sale, p. 1085.

Clause 55.—This clause is based on section 49 (*1*) and (*2*) of the English Act. The provision in sub-clause (*3*) of section 49 of the English Act dealing with interest has been included in clause 61 of the Bill.

Clause 56.—This clause is based on section 50 of the English Act. We have omitted in this and the other clauses (57 and 59) the provisions of the English Act relating to the measure of damages, as they are provided for in sections 73 and 74 of the Indian Act.

Clause 58.—This clause is based on section 52 of the English Act. We have adopted it in this Bill, inasmuch as it comes appropriately under the head of remedies. As the principles relating to specific relief in India are contained in the Specific Relief Act, 1877, the provisions of this clause are expressly made subject to that Act.

Clause 59.—In this clause the distinction between "condition" and "warranty" has been maintained. See notes to clauses 12 and 13 of the Bill.

Clause 60.—This clause is new and deals with what is known as anticipatory breach. The remedies on an anticipatory breach have been recognised for a long time in England as well as in this country. [See *Leigh* v. *Paterson* (1898) 129 R. R. 483, *Frost* v. *Knight*

(1870) L. R. 7 Exch. 111, *Mansukhdas* v. *Rangachi* 1 Mad. H. C. R. 162, *Steel Bros.* v. *Dayal Khusal* I. L. R. 47 Bom. 924.] The principle embodied in this clause is included in sections 39 and 120 of the Indian Act. We think it is desirable to make a specific provision in the Bill.

Clause 61.—Sub-clause (*1*) of this clause follows section 54 of the English Act. Sub-clause (*2*) (*a*) follows the Scottish law embodied in section 49 (*3*) of the English Act. Sub-clause (*2*) (*b*) is new. There has been a considerable conflict of opinion in India on the question whether interest can be claimed by way of damages on a breach of contract or on the price. (*See* Pollock and Mulla, page 412.) In a recent Full Bench case in Madras the majority of the Court held that a person who has advanced money to another for the supply of goods is not entitled to get interest on the amounts advanced if the seller makes default in performing the contract. Ramesam, J., however, dissented from the above view and was of opinion that interest could be awarded as damages under section 73 of the Indian Act. See *Kundappa* v. *Muthu Swami* I. L. R. 50 Mad. 94. We think it is desirable to make a specific provision for interest. The general rule of English law is that damages for the detention of a debt are merely nominal and that in an action for the price of goods sold interest is not recoverable. But the Scottish law as embodied in section 49 (*3*) of the English Act allows interest to the seller. There is no express provision either in English or Indian law for the payment of interest to the buyer suing for the refund of the price. In our opinion, the buyer should get interest in such a case, and we have therefore included a provision to that effect in sub-clause (*2*) (*b*). In our opinion interest on damages should not be awarded, and we have therefore made no provision in that behalf.

Clause 62.—This clause is based on section 55 of the English Act and is merely an application of the general maxims, *Expressum facit cessare tacitum*, and *modus et conventio vincunt legem*. The rule is well recognised in France also (*see* Chalmers' Sale of Goods, p. 137). The sale is a consensual contract and the parties may alter at will the obligations which the law implies from the general nature of the contract. The rule was well recognised in England before the passing of the English Act. In *Honck* v. *Muller* [1881] 7 Q. B. D. at page 103. Lord Blackburn, discussing the correlative obligations on payment and delivery, said: "There is no rule of law to prevent the parties from making any bargain they please."

Clause 63.—This clause relates to the import of the term "reasonable time". On the lines of section 56 of the English Act, it is provided that it is a question of fact in each case. The same provision exists in the *Explanation* to section 46 of the Indian Act.

Clause 64.—This clause relates to auction sales. The provisions of sections 122 and 123 of the Indian Act are not exhaustive. We prefer to follow section 58 of the English Act but we have altered the arrangement of the different provisions to make them more clear. The order we have adopted is supported by the provisions of the Puffer's Act, 1867 (30 and 31 Vict., c. 48). See also Halsbury, Vol. 25, page 280. Sub-clause (*5*) of this clause re-enacts the provision of 123 of the Indian Act.

Clause 66.—This is a saving clause. Sub-clause (*1*), items (*a*) to (*c*), save in general terms all transactions made, proceedings taken and rights and liabilities arising before this Bill comes into operation. Item (*d*) of the sub-clause saves any Act relating to the sale of goods which has not been expressly repealed by this Bill. Thus such enactments as the Indian Merchant Shipping Act, 1923, or the Code of Civil Procedure, 1908, which contain special provisions relating to the sale of goods are saved.

In clause 4 of the present Bill we have introduced an express provision that the provisions of the Indian Act which are not inconsistent with the provisions of this Bill shall continue to apply to contracts for the sale of goods. Thus the general Law of Contract, as embodied in the Indian Act, has been made expressly applicable to contracts for the sale of goods.

Sub-clause (*3*) of this clause is based on sub-section (*1*) of section 61 of the English Act and saves the rules of Insolvency Law, whereas sub-clause (*4*) which follows sub-section (*4*) of the English section enacts that the provisions of this Bill shall not apply to ostensible sales.

The Calcutta Gazette

THURSDAY, OCTOBER 3, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 13 OF 1929.

A BILL

to provide for the levy of a cess on soft coke despatched by rail from collieries in the provinces of Bengal and Bihar and Orissa.

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the promotion of the interests of the soft coke industry in the provinces of Bengal and Bihar and Orissa;

AND WHEREAS for this purpose it is expedient to levy a cess on soft coke despatched by rail from collieries in the said provinces;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Soft Coke Cess Act, 1929.

(*2*) It extends to the whole of British India, except Aden.

(*3*) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Committee" means the Soft Coke Cess Committee constituted under section 4;

(*b*) "prescribed" means prescribed by rules made under this Act; and

(*c*) "soft coke" means all coke which is unsuitable for metallurgical purposes.

Imposition of soft coke cess.

3. (*1*) There shall be levied and collected on all soft coke despatched by rail from collieries in the provinces of Bengal and Bihar and Orissa a cess at the rate of two annas per ton.

(*2*) The cess shall be collected by the Railway Administrations concerned by means of a surcharge on freight and shall be paid to the Committee, after deduction of the expenses of collection (if any), in such manner as may be prescribed.

Constitution of soft Coke Cess Committee.

4. (*1*) The Governor-General in Council shall constitute a Committee, consisting of the following members, to receive and expend the proceeds of the cess:—

(*i*) the Chief Mining Engineer to the Railway Board, *ex-officio*;

(*ii*) one person nominated by the Local Government of Bengal;

(*iii*) one person nominated by the Local Government of Bihar and Orissa;

(*iv*) seven persons nominated by the Indian Mining Federation; and

(*v*) one person nominated by the Indian Mining Association:

Provided that, if within the period prescribed in this behalf, any authority or body fails to make any nomination which it is entitled to make under this section, the Governor-General in Council may himself nominate a member to fill the vacancy.

(*2*) The Chief Mining Engineer to the Railway Board shall be *ex-officio* President of the Committee.

(*3*) Where a nominated member dies, resigns, ceases to reside in British India or becomes incapable of acting, the Governor-General in Council may, on the recommendation of the authority or body which would have been entitled to make the nomination if it had been a first nomination under sub-section (*1*), or where such recommendation is not made within the prescribed period, then on his own initiative, nominate a person to fill the vacancy.

(*4*) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee.

Application of proceeds of soft coke cess.

5. The proceeds of the cess and any other monies received by the Committee shall be applied to meeting the expenses of the Committee and the cost of such measures as it may consider advisable to take for promoting the sale and improving the methods of manufacture of soft coke.

Keeping and auditing of accounts.

6. (*1*) The Committee shall keep accounts of all monies received and expended under section 5.

(*2*) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Governor-General in Council; and such auditors may disallow any item which has, in their opinion, been expended out of any monies so received otherwise than as directed by or under this Act.

(*3*) If any item is disallowed, an appeal shall lie to the Governor-General in Council, whose decision shall be final.

Power to make rules.

7. (*1*) The Governor-General in Council may, after consulting the Committee and after previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the regulation of the nomination of members of the Committee, and the procedure of the Committee,

(*b*) the regulation of the levy, collection and payment of the cess, and

(*c*) the form of accounts to be kept and the publication of an abstract of such accounts with the report of the auditors thereon.

(*3*) All such rules shall be published in the Gazette of India.

Time during which sections 2 to 7 are to remain in force.

8. Sections 2 to 7 shall remain in force only until the 31st December, 1934:

Provided that the Governor-General in Council may, on the recommendation of the Committee, declare, by notification in the Gazette of India, that the said sections shall continue in force for any further period specified in such notification.

Disposal of surplus proceeds.

9. When sections 2 to 7 cease to be in force, all monies and other property in the possession of the Committee shall revert to His Majesty.

STATEMENT OF OBJECTS AND REASONS.

Indian collieries have for some years past suffered from trade depression, particularly those producing the quality of coal generally known as second class. The owners of such collieries have found some relief in the manufacture and sale of soft coke, suitable for domestic consumption, but the market for soft coke is limited, partly owing to the competition of other fuels, and partly because the value of soft coke as a domestic fuel is not generally realised. In these circumstances, the Indian Mining Federation approached the Government of India with the suggestion that a cess should be collected by official agency from the trade, and that the proceeds of the cess be devoted to expenditure on measures to popularise soft coke in Indian markets. It is, therefore, considered desirable to impose by legislation a cess of 2 annas per ton on all soft coke despatched by rail from collieries in Bengal and Bihar and Orissa for the purpose of creating a fund to finance measures for promoting the sale and improving the methods of manufacture of soft coke. It is proposed to entrust the administration of the fund to a Soft Coke Cess Committee, consisting of members representing the two Local Governments concerned, the Indian Mining Federation and the Indian Mining Association, and including the Chief Mining Engineer to the Railway Board, who will also be *ex-officio* President of the Committee. The Bill, which is largely based on the Tea Cess Act and the Lac Cess Act, is intended to give effect to this proposal. It has the support of the Indian Mining Federation which represents the interests of the soft coke industry.

G. RAINY.

SIMLA;
The 8th August, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 15 OF 1929.

A Bill further to amend the Indian Boilers Act, 1923, for certain purposes.

WHEREAS it is expedient further to amend the Indian Boilers Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows:— V of 1923.

Short title. **1.** This Act may be called the Indian Boilers (Amendment) Act, 1929.

Amendment of section 2, Act V of 1923. **2.** In clause (*b*) of section 2 of the Indian Boilers Act, 1923 (hereinafter referred to as the said Act), the words " for use outside such vessel " shall be omitted. V of 1923.

Amendment of section 34, Act V of 1923. **3.** Section 34 of the said Act shall be re-numbered as sub-section (*2*) of section 34 and the following sub-section shall be inserted as sub-section (*1*) of that section, namely:—

Exemptions. " 34. (*1*) The Local Government may, by notification in the local official Gazette, exempt, from the operation of this Act, subject to such conditions and restrictions as it thinks fit, any boilers or classes or types of boilers used exclusively for the heating of buildings or the supply of hot water."

STATEMENT OF OBJECTS AND REASONS.

The definition of " boiler " in clause (*b*) of section 2 of the Indian Boilers Act, 1923, is defective, as it excludes vessels used for generating steam under pressure for use *inside* such vessels. Such vessels are as much liable as other vessels to explode if improperly constructed, used or maintained and may be a source of considerable danger. It has therefore been decided to omit the words " for use outside such vessel " from the clause.

2. Clause (2) of Regulation 3 of the Indian Boiler Regulations, 1924, prohibits the registration and consequently the use of a boiler if a structural part subject to pressure is made of cast-iron. Cast-iron boilers, are, however, extensively used in Europe and in America, and it has been pointed out that the restriction imposed by the law in India on the use of cast-iron boilers is a serious impediment to the economic heating of buildings and the supply of hot water. It has therefore been decided that a new clause should be added to section 34 of the Indian Boilers Act, 1923, so as to empower Local Governments to exempt from the operation of the Act, subject to such conditions and restrictions as they may think fit to impose, any boilers or classes or types of boilers which are used exclusively for the heating of buildings or for the supply of hot water.

B. N. MITRA.

SIMLA;
The 8th August, 1929.

S. C. GUPTA,
Secretary of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 18 OF 1929.

A BILL

further to amend the Cantonments (House-Accommodation) Act, 1923, for certain purposes.

WHEREAS it is expedient further to amend the Cantonments (House-Accommodation) Act, 1923, for the purposes hereinafter appearing; VI of 1923.
It is hereby enacted as follows:—

Short title.

1. This Act may be called the Cantonments (House-Accommodation Amendment) Act, 192 .

Amendment of section 2, Act VI of 1923.

2. In section 2 of the Cantonment (House-Accommodation) Act, 1923 (hereinafter referred to as the said Act), VI of 1923.

(*a*) clause (*b*) of sub-section (*1*) shall be omitted, and clause (*bb*) shall be relettered as clause (*b*);

(*b*) in clause (*d*) of sub-section (*1*), after the words "in a cantonment" the following words shall be added, namely:—

"or, if that officer is the Officer Commanding the District, the military officer who would be in command of those forces in the absence of the Officer Commanding the District"; and

(*c*) in sub-section (*2*), for the words "District Magistrate" the word "Collector" shall be substituted.

Substitution of new section for section 6, Act VI of 1923.

3. For section 6 of the said Act the following section shall be substituted, namely:—

Conditions on which houses may be appropriated.

"6. (*1*) Where—

(*a*) a military officer who is stationed in or has been posted to the cantonment, applies in writing to the Officer Commanding the Station stating that he is unable to secure suitable accommodation in the cantonment on reasonable terms by private agreement, and that no suitable house or quarter belonging to Government is available for his occupation, and the Officer Commanding the Station is satisfied of the truth of the facts so stated, or

(*b*) the Officer Commanding the Station is satisfied that there is not in the cantonment a sufficient and assured supply of houses available at reasonable rates of rent by private agreement to meet the requirements of the military officers and military messes whose accommodation in the cantonment is, in his opinion, necessary or expedient,

the Officer Commanding the Station may, with a view to enforcing the liability under section 5, serve on the owner of any house situate in the cantonment, or, if the Act is in force in part only of the cantonment, in that part which appears to him to be suitable for occupation by a military officer or military mess, as the case may be, a notice requiring the owner to permit the house to be inspected, measured and surveyed by such person and on such date, not being less than three days from the service of the notice, and at such time as may be specified in the notice.

(*2*) On the date and at the time so specified the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purpose of the inspection, measurement and survey of the house and, if he refuses or neglects to do so, such person may, subject to any rules made under this Act, enter on the premises and do all such things as may be reasonably necessary for the said purpose."

Amendment of section 7, Act VI of 1923.

4. In section 7 of the said Act,—

(*a*) in sub-section (*1*), the words " with the previous sanction of the Officer Commanding the District," shall be omitted, and

(*b*) to sub-section (*3*) the following proviso shall be added, namely:—

" Provided that nothing in this sub-section shall be deemed to affect the right of the Government to avoid the lease in any such event as is specified in clause (*e*) of section 108 of the Transfer of Property Act, 1882." IV of 1882.

Omission of section 8, Act VI of 1923.

5. Section 8 of the said Act shall be omitted.

Amendment of section 10, Act VI of 1923.

6. In section 10 of the said Act,—

(*a*) for clause (*c*) the following clause shall be substituted, namely:—

" (*c*) is occupied *bona fide* by the owner as his residence and has been so occupied continuously during the three months immediately preceding the issue of the notice under section 6, or ": and

(*b*) after clause (*c*) the following clause shall be inserted, namely:—

" (*cc*) has not been occupied by a military officer at any time during the ten years immediately preceding the issue of the notice under section 6, or ".

Amendment of section 13, Act VI of 1923.

7. In sub-section (*2*) of section 13 of the said Act, for the words " a Committee of Arbitration " the words " a Civil Court, in accordance with the provisions of Chapter IV " shall be substituted.

Amendment of section 15, Act VI of 1923.

8. In section 15 of the said Act,—

(*a*) in sub-section (*1*), for the word " fifteen " the word " thirty " shall be substituted, and for the words " require that the matter be referred by the Officer Commanding the Station to a Committee of Arbitration " the words " refer the matter to a Civil Court, in accordance with the provisions of Chapter IV " shall be substituted; and

(*b*) in sub-section (*2*), for the word " requisition " the word " reference " shall be substituted.

Amendment of section 16, Act VI of 1923.

9. In section 16 of the said Act,—

(*a*) in sub-section (*1*), for the word " fifteen " the word " thirty " shall be substituted;

(*b*) in sub-section (*2*), for the word " fifteen " the word " thirty " shall be substituted, and for the words " require that the matter be referred by the Officer Commanding the Station to a Committee of Arbitration " the words " refer the matter to a Civil Court, in accordance with the provisions of Chapter IV " shall be substituted; and

(*c*) after sub-section (*2*) the following sub-section shall be added, namely:—

" (*3*) Every reference under sub-section (*2*) shall be accompanied by an estimate of the repairs, if any, which the owner considers necessary in order to put the house into a state of reasonable repair."

Substitution of new section for section 17, Act VI of 1923.

10. For section 17 of the said Act the following section shall be substituted, namely:—

Power to have repairs executed and recover cost.

" 17. If the owner fails to comply with a notice issued under sub-section (*1*) of section 16, the Military Engineer Services or the Public Works Department may, with the previous sanction of the Officer Commanding the Station and notwithstanding any right of reference conferred by that section, cause the repairs specified in the notice to be executed at the expense of the Government, and the cost thereof, or, where a reference has been made, the amount finally determined by the Civil Courts, may be deducted from the rent payable to the owner."

Substitution of new Chapter for Chapter IV, Act VI of 1923.

11. For Chapter IV of the said Act the following Chapter shall be substituted, namely:—

"CHAPTER IV.

PROCEDURE IN REFERENCES.

Jurisdiction in references.

19. All references under this Act shall be made by application to and tried by the Court of the District Judge.

Procedure and powers of the Court.

20. References under this Act shall be deemed to be proceedings within the meaning of section 141 of the Code of Civil Procedure, 1908, and in the trial thereof the Court may exercise any of its powers under that Code. V of 1908.

Restriction of scope of inquiry.

21. The scope of the inquiry in a reference under this Act shall be restricted to a consideration of the matters referred to the Court in accordance with the provisions of this Act."

Substitution of new section for section 29, Act VI of 1923.

12. For section 29 of the said Act the following section shall be substituted, namely:—

Appeals to Civil Courts.

"29. (*1*) An appeal shall lie to the High Court against the decision of the Court of the District Judge upon a reference tried by it.

(*2*) No appeal under this section shall be admitted unless it is made within thirty days from the date of the decision against which it is preferred.

(*3*) An appeal preferred under this section shall be deemed to be an appeal from an order within the meaning of section 108 of the Code of Civil Procedure, 1908." V of 1908.

Substitution of new section for section 30, Act VI of 1923.

13. For section 30 of the said Act the following section shall be substituted, namely:—

Appeal to Officer Commanding the District.

"30. The owner or any tenant of a house in respect of which a notice has been issued under section 7 may, within a period of twenty-one days from the date of the service thereof, appeal to the Officer Commanding the District against the decision of the Officer Commanding the Station to appropriate the house."

Amendment of section 32, Act VI of 1923.

14. In section 32 of the said Act,—

(*a*) the words "or of the General Officer Commanding-in-Chief, the Command, as the case may be" shall be omitted; and

(*b*) after the proviso the words "and in giving a decision the General Officer Commanding the District shall record briefly the grounds therefor" shall be added.

Amendment of section 33, Act VI of 1923.

15. In section 33 of the said Act, for the words "by sub-section (*2*) of that section" the word "therein" shall be substituted.

Insertion of new section 34A in Act VI of 1923.

16. After section 34 of the said Act the following section shall be inserted, namely:—

Computation of periods of limitation.

"34A. The period prescribed for making any reference or preferring any appeal under this Act shall be computed in accordance with the provisions of the Indian Limitation Act, 1908." IX of 1908.

Amendment of section 35, Act VI of 1923.

17. In section 35 of the said Act, clause (*a*) of sub-section (*2*) shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

The Cantonments (House-Accommodation) Act, 1923, was intended to continue the powers possessed by the military authorities to appropriate, where the need arose, such houses in cantonments as were originally intended, and were suitable, for occupation by military officers or messes; and to safeguard the rights of house-owners, and to secure for them fair rents and equitable conditions of tenancy, when their houses were appropriated.

The working of the Act during the past five years has shown that some of its provisions are obscure, and others are defective with reference to one or other of the two main intentions stated above. The present Bill aims at removing these obscurities and defects.

Further as the law stands at present, the question of the rent of, and repairs to, a building appropriated under the Act may be

referred on appeal first to a Committee of Arbitration and then to the Civil Court. The Committee of Arbitration is composed of a Chairman (who must be a person neither in the service of Government or the Cantonment Authority, nor having any interest in house property liable to appropriation under the Act), two persons nominated by the Officer Commanding the Station, and two local residents nominated by the owner. Difficulties have been experienced in obtaining a Chairman and non-official members with the requisite qualifications to undertake these thankless and, in many cases, laborious honorary duties, and when a Committee has been appointed, it is frequently unable to reach a decision within a short time. In order to obviate the inconveniences and delays of the present system, it is proposed to abolish the Arbitration Committees and provide for the reference of the above-mentioned matters to the Civil Courts direct.

The opportunity has been taken at the same time to introduce certain other improvements of minor importance. Notes on the clauses are attached.

G. R. F. TOTTENHAM.

SIMLA :

The 20th August, 1929.

NOTES ON CLAUSES.

Clause 2 (a).—Owing to the proposed abolition of Arbitration Committees, the words "Cantonment Authority" will disappear from the Act and a definition is no longer required.

Clause 2 (b).—The proposed addition to the definition of "Officer Commanding the Station" brings it into line with the definition in section 2 (*ix*) of the Cantonments Act, 1924. Thus the Officer Commanding the District can in no case be called upon to perform the duties of the Officer Commanding the Station and remains in all cases the administrative appellate authority under the Act.

Clause 2 (c).—The revisional jurisdiction under section 2 (*2*) of the Act is not magisterial in character. It is exercised by the officer in his administrative capacity and it is therefore preferable to call him "the Collector."

Clause 3.—The amendment of section 6 is designed to afford a clearer definition of the circumstances in which the liability under section 5 may be enforced than the somewhat obscure instructions at present contained in section 8. Two main sets of circumstances are contemplated. The liability may be enforced in the first place as a result of an application from an individual officer, but only if he can satisfy the Officer Commanding the Station that he cannot be provided with Government quarters and that after making all reasonable efforts he has been unable to make satisfactory private arrangements. In the second place, a shortage of accommodation in the Cantonment as a whole may render it necessary for the Officer Commanding to take more comprehensive action on his own initiative instead of awaiting applications from individual officers, and new section 6 (*1*) (*b*) describes the circumstances in which he may do so. The "inspection" notice for which the section provides is intended to enable the Officer Commanding the Station to judge whether the building is a "house" as defined by the Act—namely, suitable for occupation by a military officer or mess.

Clause 4.—Section 7 (*3*) (*a*) of the Act, as it stands at present, makes it incumbent upon Government without any qualification to redeliver a house to an owner, on the expiration of the lease, in a state of reasonable repair as defined in section 2 (*1*) (*i*). The ordinary rule, according to the provisions of the Transfer of Property Act, 1882, is that a lessee shall hand back the property in as good condition as it was at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force; and that a lease should, at the option of the lessee, be void if any material part of the property is wholly destroyed, or rendered unfit for the purposes for which it was let, as a result of fire, tempest, flood or violence, provided that the injury was not occasioned by the wrongful act or default of the lessee. The Government have no intention of departing from the principle of section 7 (*3*) (*a*), which is already more than usually favourable to the lessor, but they see no reason why they should be excluded from the latter benefit mentioned above, and the Bill accordingly provides for the protection of Government in this respect to the same extent as in the case of an ordinary lessee.

Clause 5.—The omission of section 8 of the Act and of the words "with the previous sanction of the Officer Commanding the District" in the previous section [clause 4 (*a*)] is due to the fact that the Officer Commanding the District is himself, under section 30, the appellate authority against a decision to appropriate a house. The grounds which would justify such a decision are fully explained for the guidance of the Officer Commanding the Station in section 6 as amended, and it is illogical that the previous sanction of the Officer Commanding the District should be required to a decision on the correction of which he may himself be called upon to adjudicate in appeal.

Clause 6.—The amendments to section 10 are designed, firstly, to protect the existing *bona fide* owner-occupier from disturbance, but to make it difficult or impossible for owners of houses in future to defeat the first object of the Act (*i.e.*, to secure accommodation for military officers) by going into "bogus occupation" on the eve of contemplated appropriation proceedings; and secondly, to make it clear that Government do not intend to appropriate houses built on private property which were not originally intended to provide accommodation for military officers.

Clauses 7, 8 and 9.—The reference to a Committee of Arbitration on the questions of the purchase value of a house, its rental value, or the amount of repairs required is done away with and the new clauses provide for a direct reference to the civil courts in these matters. The time allowed for the reference on the question of rent and repairs is extended to 30

days and the new sub-section (*3*) of section 16 gives the owner an opportunity to set forth his case on the question of repairs before the civil court.

Clause 10.—The new section makes it clear that the owner's failure to execute the repairs in time or his reference to the civil court need not cause any delay in the appropriation proceedings and thus prevent the Government from making use of the house for which they are paying rent. The Government is empowered to execute the repairs in spite of the reference, and the interests of the owner are safeguarded by the express provision that his liability is limited to the amount finally fixed by the courts.

Clause 11.—The chapter dealing with the procedure of Committees of Arbitration becomes superfluous and is replaced by a chapter explaining the procedure to be followed in hearing references to the civil courts made under sections 13, 15 and 16. The new sections are self-explanatory.

Clause 12.—The amended section provides for an appeal to the High Court, in place of the appeal to the civil court which previously lay from the decision of the Arbitration Committee.

Clause 13.—The amendment is consequential on the alteration of the definition of the Officer Commanding the Station [see clause 2 (*b*)].

Clause 14.—The first part of the amendment is consequential. The second part requires the Officer Commanding the District to record his reasons when deciding an appeal, which was not previously necessary.

Clause 15.—The amendment is consequential.

Clause 16.—The amendment extends to all references and appeals under the Act the provision in existing section 30 (*2*), to the effect that the period allowed for making an appeal should be computed in accordance with the provisions of the Indian Limitation Act, 1908.

Clause 17.—The amendment is consequential.

S. C. GUPTA,
Secretary of the Legislative Assembly.

The Calcutta Gazette

THURSDAY, OCTOBER 10, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 12 OF 1929.

A BILL

to amend section 178 of the Indian Contract Act, 1872.

WHEREAS it is expedient to amend section 178 of the Indian Contract Act, 1872, for the purpose hereinafter appearing; It is hereby enacted as follows:— IX of 1872.

Short title and commencement.

1. (*1*) This Act may be called the Indian Contract (Amendment) Act, 19 .

(*2*) It shall come into force on the day of , 19 .

Amendment of section 178, Act IX of 1872.

2. For section 178 of the Indian Contract Act, 1872, the following section shall be substituted, namely:— IX of 1872.

Pledge of goods by person not the owner.

"178. Where an agent, having in the customary course of his business authority to sell goods or to consign goods for the purpose of sale or to buy goods, or to raise money on the security of goods, is, with the consent of the owner, in the possession of goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented, any pledge of the

goods made by such agent shall be as valid as if he were expressly authorised by the owner of the goods to make the same:

Provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge:

Provided also that such goods or documents have not been obtained by the pawnor from the lawful owner or from any person in lawful custody of them by means of an offence or fraud."

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to the recommendation of the Special Committee, appointed by the Government of India to examine and draft the Indian Sale of Goods Bill, that section 178 of the Indian Contract Act, 1872, should be amended so as to make it consistent with the amendment proposed by the Committee in section 108. Both the sections are cognate and are based on the same principle; and there has been considerable conflict of decisions regarding their scope. The Special Committee has proposed to remove this conflict in section 108 by restricting its provisions to sales by persons who are in possession of the subject-matter of the sale as mercantile agents only, and the present Bill amends section 178 of the Indian Contract Act, 1872, on the same lines.

B. L. MITTER.

SIMLA;

The 17th July, 1929.

S. C. GUPTA,
Secretary to the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 16 OF 1929.

A BILL

further to amend the Negotiable Instruments Act, 1881, for a certain purpose.

WHEREAS it is expedient further to amend the Negotiable Instruments Act, 1881, for the purpose of providing that a negotiable instrument originally made payable to bearer shall be negotiable by delivery notwithstanding that it has been indorsed in full; It is hereby enacted as follows:— XXVI of 1881.

Short title.

1. This Act may be called the Negotiable Instruments (Amendment) Act, 1929.

Amendment of section 13, Act XXVI of 1881.

2. In sub-section (*1*) of section 13 of the Negotiable Instruments Act 1881 (hereinafter referred to as the said Act), XXVI of 1881.

(*a*) for *Explanation* (*i*) the following *Explanation* shall be substituted, namely:—

"*Explanation* (*i*).—A promissory note, bill of exchange, or cheque is payable to order which is expressed by the maker or drawer thereof to be so payable or to be payable to a particular person and which does not contain words prohibiting transfer or indicating an intention that it shall not be transferable and on which the only or last indorsement, if any, is an indorsement in full"; and

(*b*) in *Explanation* (*ii*), after the word "expressed" the words "by the maker or drawer thereof" shall be inserted.

Amendment of section 16, Act XXVI of 1881.

3. In sub-section (*2*) of section 16 of the said Act, after the word "indorsee" the words "of a negotiable instrument payable to order" shall be inserted.

Amendment of section 35, Act XXVI of 1881.

4. In section 35 of the said Act, after the words "negotiable instrument" the words "payable to order" shall be inserted.

Amendment of section 37, Act XXVI of 1881.

5. In section 37 of the said Act, after the words "parties thereto are" the words "in the case of a promissory note, cheque or bill of exchange payable to order" shall be inserted.

Amendment of section 39, Act XXVI of 1881.

6. In section 39 of the said Act, after the words "bill of exchange" the words "payable to order" shall be inserted.

Amendment of section 40, Act XXVI of 1881.

7. In section 40 of the said Act, after the words "negotiable instrument" the words "payable to order" shall be inserted.

Amendment of section 41, Act XXVI of 1881.

8. In section 41 of the said Act, after the words "bill of exchange" the words "payable to order and" shall be inserted.

Amendment of section 44, Act XXVI of 1881.

9. In the *Explanation* to section 44 of the said Act, after the word "indorser" and after the word "signers" the words "of a promissory note, bill of exchange or cheque payable to order" shall be inserted.

Amendment of sections 46 and 47, Act XXVI of 1881.

10. In section 46 of the said Act, in the 4th paragraph, and in section 47 of the said Act, after the words "by delivery thereof" the words "notwithstanding that it has been indorsed" shall be added.

Amendment of section 49, Act XXVI of 1881.

11. In section 49 of the said Act, after the words "negotiable instrument" the words "originally payable to order and subsequently" shall be inserted.

Amendment of section 50, Act XXVI of 1881.

12. In section 50 of the said Act,—

(*a*) after the words "negotiable instrument" the words "payable to order" shall be inserted; and

(*b*) in the *Illustrations*, for the words "payable to bearer" the words "payable to order" shall be substituted.

Amendment of section 51, Act XXVI of 1881.

13. In section 51 of the said Act, after the words "negotiable instrument" the words "payable to order" shall be inserted.

Amendment of section 52, Act XXVI of 1881.

14. In section 52 of the said Act, after the words "negotiable instrument", wherever they occur, the words "payable to order" shall be inserted.

Amendment of section 55, Act XXVI of 1881.

15. In section 55 of the said Act, after the words "negotiable instrument" the words "originally payable to order" shall be inserted.

Amendment of section 56, Act XXVI of 1881.

16. In section 56 of the said Act, for the word "which" the words "if payable to order and it" shall be substituted.

Amendment of section 88, Act XXVI of 1881.

17. In section 88 of the said Act, after the word "acceptor" the words "of a bill of exchange" shall be inserted, and after the words "negotiable instrument" the words "payable to order" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to amend the Negotiable Instruments Act, 1881 (XXVI of 1881), so as to provide that negotiable instruments including cheques and bills of exchange, which are expressed on the face of them as drawn to bearer, shall not, in any circumstances, lose their character as bearer instruments on account of their having been indorsed. The necessity for the amendment has arisen out of a ruling by the Bombay High Court that under section 50 of the Negotiable Instruments Act, 1881, and the *Explanation* thereto, a bearer bill can be legally changed to an order bill by endorsement. This makes it incumbent upon banks and business houses to examine all endorsements upon bearer instruments, as the character of an instrument, which is payable to bearer in the first instance, can be effectively altered by any subsequent endorsement, and thus throws considerable extra work and responsibility on banks and commercial houses without any compensatory advantage to their constituents or to the general public.

Under section 13, *Explanation* (*ii*) of the Negotiable Instruments Act, a bill indorsed in blank is payable to bearer, but under section 49 of the same Act the holder by writing a direction above the indorser's signature may convert the indorsement in blank into an indorsement in full. These provisions under which an order bill which has become bearer may be re-converted into an order bill, will be retained.

GEORGE SCHUSTER.

SIMLA;
The 14th July, 1929.

S. C. GUPTA,
Secretary to the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 17 OF 1929.

A BILL

further to amend the Negotiable Instruments Act, 1881, for a certain purpose.

WHEREAS it is expedient further to amend the Negotiable Instruments Act, 1881, for the purpose hereinafter appearing; It is hereby enacted as follows:— XXVI of 1881

Short title.

1. This Act may be called the Negotiable Instruments (Second Amendment) Act, 1929.

Insertion of new section 85A in Act XXVI of 1881.

2. After section 85 of the Negotiable Instruments Act, 1881, the following section shall be inserted, namely:— XXVI of 1881.

Drafts drawn by one branch of a bank on another payable to order.

"85A. Where any draft, drawn by one branch of a bank (which term includes a head office) upon another branch of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course."

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to amend the Negotiable Instruments Act, 1881, so as to make it clear that the Act affords protection to bankers in India against forged or unauthorised endorsements on demand drafts drawn by one branch of a bank upon another branch of the same bank. A doubt has been expressed in authoritative quarters as to whether the Indian law, as it stands at present, extends the same protection to banks in India as the English law does to banks in England; and, consequently, legislation is considered to be expedient in order that the position may be established beyond all doubt.

GEORGE SCHUSTER.

SIMLA:
The 23rd August, 1929.

S. C. GUPTA,
Secretary to the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 9th September, 1929:—

L. A. BILL No. 20 OF 1929.

A BILL

further to amend the Code of Criminal Procedure, 1898, for a certain purpose.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, for the purpose hereinafter appearing; It is hereby enacted as follows:— V of 1898.

Short title.

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1929.

Insertion of new section 540B in Act V of 1898.

2. After section 540A of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code), the following section shall be inserted, namely:— V of 1898.

Special provision for inquiry or trial being held when accused's absent arises from his voluntary act.

"540B. (*1*) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any accused, in consequence of a single act or series of acts done or course of conduct pursued by him after his arrest, has voluntarily rendered himself incapable of remaining before the Court, such Judge or Magistrate may, whether such accused is represented by a pleader or not, dispense with his attendance and proceed with the inquiry or trial in his absence.

(*2*) In any such inquiry or trial, where a plea is required in answer to a charge from an absent accused whose attendance has been dispensed with under sub-section (*1*), such accused shall be deemed not to plead guilty.

(*3*) Notwithstanding anything contained in this Code, no finding, sentence or order passed in such inquiry or trial shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (*1*).

(*4*) No order under sub-section (*1*) dispensing with the attendance of an accused shall affect his right to attend or to be represented by a pleader at any subsequent stage of the proceedings."

Application.

3. Where an inquiry or trial has begun before the commencement of this Act, section 540B of the said Code as hereby enacted shall have effect:

Provided that, where the accused's incapability of remaining before the Court arises from a series of acts or course of conduct begun before the commencement of this Act, the said section shall have effect only where the series of acts or course of conduct is continued after the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS.

The Code of Criminal Procedure, 1898, contains no provision by which an inquiry or a trial can continue in the absence of an accused person if he is not represented by counsel. The High Court of Judicature at Lahore have recently held that there is no provision of the law by which counsel may be appointed to represent an accused person without the latter's consent. It is, therefore, possible for an accused person to bring the administration of justice to a standstill by a voluntary act by which he renders himself incapable of attending Court.

2. The provisions of this Bill are intended to prevent the delay and defeat of justice by empowering Judges or Magistrates to proceed in the absence of an accused, even if he is not represented by counsel, if the Judge or Magistrate is satisfied that his incapacity to attend Court is due to a voluntary act, done or course of conduct pursued by, him after arrest.

JAMES CRERAR.

SIMLA;
The 6th September, 1929.

S. C. GUPTA,
Secretary to the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Department.

The following Bill was introduced in the Council of State on the 16th September, 1929:—

C. OF S. BILL NO. 8 OF 1929.

A Bill

further to amend the Indian Succession Act, 1925, for certain purposes.

WHEREAS it is expedient further to amend the Indian Succession Act, 1925, for the purposes hereinafter appearing; It is hereby enacted as follows:— XXXIX of 1925.

Short title.

1. This Act may be called the Indian Succession (Amendment) Act, 1929.

Amendment of section 2, Act XXXIX of 1925.

2. After clause (*b*) of section 2 of the Indian Succession Act, 1925 (hereinafter referred to as the said Act), the following clause shall be inserted, namely:— XXXIX of 1925.

"(*bb*) 'District Judge' means the Judge of a principal Civil Court of original jurisdiction;".

Amendment of section 57, Act XXXIX of 1925.

3. (*1*) Sub-section (*1*) of section 57 of the said Act shall be renumbered as section 57, and after clause (*b*) and before the proviso the word "and" and the following clause shall be added, namely:—

"(*c*) to all wills and codicils made by any Hindu, Buddhist, Sikh, or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (*a*) and (*b*):".

(*2*) Sub-section (*2*) of section 57 of the said Act shall be omitted.

Amendment of section 213, Act XXXIX of 1925.

4. In sub-section (*2*) of section 213 of the said Act for the word "class" the word "classes" and for the words and figures "sub-section (*1*) of section 57" the words, letters and figures "clauses (*a*) and (*b*) of section 57" shall be substituted.

Repeals.

5. The enactments specified in the Schedule are hereby repealed.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 5.*)

Year.	No.	Short title.
1926	XXXVII	The Indian Succession (Amendment) Act, 1926.
1928	XXI	The Indian Succession (Second Amendment) Act, 1928.

STATEMENT OF OBJECTS AND REASONS.

The Indian Succession Act, 1865 (X of 1865), contained in section 3 a definition of the expression "District Judge" which was wide enough to include and was always held to include a Judge of the High Court exercising probate jurisdiction on the Original Side. The Consolidation Act of 1925 (XXXIX of 1925) omitted this definition, with the result that the expression "District Judge" cannot be held to include a High Court in the exercise of its ordinary or extraordinary civil jurisdiction in view of the definition contained in the General Clauses Act, 1897. As the Indian Succession Act of 1925 now stands, numerous powers contained therein and given to District Judges have not been given to the High Court on its Original Side. This effect of the omission of the definition of "District Judge" from the Act of 1925 was apparently not foreseen and it is proposed to restore it. Clause 2 of the Bill gives effect to this proposal.

2. The remaining clauses are intended to supply another omission. Under sub-section (*2*) of section 57 of the Act of 1925, which was inserted by Act XXXVII of 1926, all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the 1st January, 1927, in areas outside those where sub-section (*1*) of that section is in force, are required to be reduced to writing, signed and attested under section 63 of the Act. It is considered that the provisions of the other sections of the Indian Succession Act set out in Schedule III should be made applicable to the class of wills dealt with in section 57 (*2*), since the failure to apply these provisions to those wills may lead to the inference that different principles govern them, and once it is decided that this class of wills should be in writing, signed and attested, there is no reason for differentiating it from the wills falling under clauses (*a*) and (*b*) of section 57 (*1*).

The necessary amendments are provided in clauses 3 and 4 of the Bill.

3. In consequence of these amendments Act XXXVII of 1926 and Act XXI of 1928 will no longer be necessary, and it is proposed to repeal them.

C. W. GWYNNE,

SIMLA:

The 13th September, 1929.

L. GRAHAM,

Secy. to the Govt. of India.

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Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 27 OF 1929.

A Bill further to amend the Imperial Bank of India Act, 1920, for certain purposes.

WHEREAS it is expedient further to amend the Imperial Bank of India Act, 1920, for certain purposes hereinafter appearing; It is hereby enacted as follows: XLVII of 1920.

Short title and commencement.

1. (*1*) This Act may be called the Imperial Bank of India (Amendment) Act, 192 .

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Insertion of new clauses and sub-section in section 10, Act XLVII of 1920.

2. After clause (*b*) of sub-section (*2*) of section 10 of the Imperial Bank of India Act, 1920 (hereinafter referred to as the said Act), the following clauses and sub-section shall be inserted, namely:— XLVII of 1920.

"(*c*) that from the date of the promulgation of this Act as amended, the total number of European officers shall not at any period exceed the number employed at the time of amalgamation of the Presidency Banks; and

(*d*) that the London branch shall provide training for at least five Indian Graduates from recognised Universities every year.

(*3*) All future agreements with the Imperial Bank of India shall be subject to the approval of the Legislative Assembly and shall be of temporary nature."

Amendment of section 28, Act XLVII of 1920.

3. In clause (*v*) of sub-section (*1*) of section 28 of the said Act, after the words "such number of Managing Governors not exceeding two as may be appointed by the Governor General in Council after consideration of the recommendations of the Central Board" the words "of whom one at least shall be an Indian" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

It was expected that a Reserve Bank for India will come into existence and will exercise the privileges now enjoyed by the Imperial Bank of India at present. It will take a few more years till India has her own Reserve Bank under the control of the Government and people of India. Eventually the Imperial Bank of India will have to take place with other Banks in India, and hence it is desired that neither the Government of India nor the Secretary of State should enter into any further agreement without consent of the Legislative Assembly. The Imperial Bank of India Act, 1920, was framed mainly in the interests of its old constituents—the Presidency Banks, and it is desired in the interest of the tax-payers that the special privileges it has been so far enjoying should not be abused.

2. A number of minor amendments in the interest of the tax-payers and the Indian public are also made to focus the attention of the authorities of the Imperial Bank to their definite obligations to India and Indians.

B. DAS.

S. C. GUPTA,
Secretary of the Legislative Assembly.

The Calcutta Gazette

THURSDAY, OCTOBER 31, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 2nd September, 1929:—

L. A. BILL No. 9 OF 1929.

A Bill further to amend the Indian Income-tax Act, 1922, for certain purposes.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing; It is hereby enacted as follows:— XI of 1922.

Short title.

1. This Act may be called the Indian Income-tax (Amendment) Act, 1929.

Amendment of section 14, Act XI of 1922.

2. In sub-section (*2*) of section 14 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), XI of 1922.—

(*a*) in clause (*b*), after the word "assessment" the word "or" shall be added; and

(*b*) the following clause shall be added, namely:—

"(*c*) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax."

Amendment of section 25A, Act XI of 1922.

3. In section 25A of the said Act,—

(*a*) in sub-section (*1*),—

(*i*) after the word "hitherto" the words "assessed as" shall be inserted, and

(*ii*) the words "before the end of the previous year" shall be omitted; and

(*b*) the following sub-section shall be added, namely:—

"(*3*) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family."

Amendment of section 31, Act XI of 1922.

4. In sub-section (*3*) of section 31 of the said Act,—

(*a*) after the words "thereupon proceed to make such fresh assessment," the following shall be inserted, namely:—

"or, in the case of an order refusing to make a fresh assessment under section 27,

(*c*) confirm such order, or cancel it and direct the Income-tax Officer to make a fresh assessment"; and

(*b*) clause (*c*) shall be re-lettered as clause (*d*).

Amendment of section 37, Act XI of 1922.

5. In section 37 of the said Act, after the figures "228" the words and figures "and for the purposes of section 196" shall be inserted.

Amendment of section 46, Act XI of 1922.

6. In section 46 of the said Act, after sub-section (*4*) the following sub-section shall be inserted, namely:—

"(*4A*) For the purpose of the recovery of arrears, the Income-tax Officer shall have, in respect of the attachment and sale of debts due to the assessee, the powers which, under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to the judgment-debtor, for the purpose of the recovery of an amount due under a decree." V of 1908.

Amendment of section 48, Act XI of 1922.

7. In sub-sections (*1*), (*2*) and (*3*) of section 48 of the said Act, after the words "Income-tax Officer" the words "or other authority appointed by the Governor-General in Council in this behalf" shall be inserted.

Amendment of section 50, Act XI of 1922.

8. In section 50 of the said Act,—

(*a*) after the word "recovered" the words "or before the last day of the financial year commencing after the expiry of the previous year, as defined in clause (*11*) of section 2, in which the income arose on which the tax was recovered" shall be added; and

(*b*) the following proviso shall be added, namely:—

"Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner of Income-tax that he had sufficient cause for not making the claim within such period."

Amendment of section 54, Act XI of 1922.

9. In clause (*a*) of the first proviso to sub-section (*2*) of section 54 of the said Act, the words and figures "section 193 of" shall be omitted.

Amendment of section 60, Act XI of 1922.

10. Section 60 of the said Act shall be numbered as sub-section (*1*) of section 60, and the following sub-section shall be added, namely:—

"(*2*) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Governor-General in Council may grant such relief as he may think fit."

Amendment of section 61, Act XI of 1922.

11. Section 61 of the said Act shall be numbered as sub-section (*1*) of section 61, and the following sub-section shall be added, namely:—

"(*2*) The persons authorised under sub-section (*1*) shall be restricted to the following, namely:—

(*a*) in any case,—

(*i*) a pleader,

(*ii*) a person qualified under sub-section (*1*) of section 144 of the Indian Companies Act, 1913, to be appointed or to act as an auditor of companies other than private companies; or VII of 1913.

(*iii*) an employee regularly employed in the service of the assessee;

(*b*) in the case of an individual,—a relative;

(*c*) in the case of a Hindu undivided family,—an adult male member;

(*d*) in the case of a company,—a director;

(*e*) in the case of a firm,—a partner; and

(*f*) in the case of any other association of individuals—a member."

Amendment of section 66, Act XI of 1922.

12. In sub-section (*2*) of section 66, for the words "one month" in the second place where they occur, the words "two months" shall be substituted.

Insertion of new section 67A in Act XI of 1922.

13. After section 67 of the said Act, the following section shall be inserted, namely:—

Computation of periods of limitation.

"67A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded."

STATEMENT OF OBJECTS AND REASONS.

This Bill is designed to bring together a number of minor amendments relating mostly to points of machinery and administration and not designed to affect the incidence of taxation except by granting relief in two cases of hardship, neither of which is of major importance in practice (*see* clauses 2 and 10). Detailed explanations are as set forth below:—

Clause 2.—This remedies a defect in the Act and expressly provides for the relief from double taxation of a member of an association of individuals other than a firm or company or Hindu undivided family.

Clause 3.—This is a drafting amendment intended to set right a mistake in drafting the original section, as a consequence of which it had become largely inoperative.

Clause 4.—This is also a drafting amendment intended to amplify the section and make its provisions quite clear and complete.

Clause 5.—This is necessitated by a ruling of the Calcutta High Court to the effect that, in the absence of any reference to section 196 of the Indian Penal Code in section 37 of the Indian Income-tax Act, no prosecution may be launched under section 196 of the Indian Penal Code in respect of false evidence *used* in Income-tax proceedings.

Clause 6.—Arrears of income-tax can be recovered under section 46 as arrears of land-revenue. But in at least two provinces the Acts relating to the recovery of arrears of land-revenue do not permit the attachment of debts for the purpose of recovering the arrears. It is proposed, therefore, to restore to the Income-tax Officer the power which he possessed under the Act of 1886. If found necessary, executive instructions will be issued that the power proposed to be given shall be exercised by the Income-tax Officer only in those provinces in which it is not permissible, under the law relating to the recovery of arrears of land-revenue, to attach debts.

Clause 7.—The clause is intended to provide for the grant of refunds under section 48 through the High Commissioner in the United Kingdom. This means reversion to the practice which was discontinued in 1926. Complaints have been received of inconvenience to residents in the United Kingdom who have to apply for relief.

Clause 8.—The object of sub-clause (*a*) is to regularise a concession now given by executive orders. The object of sub-clause (*b*) is to provide for cases of hardship which sometimes occur.

Clause 9.—Proviso (*a*) to section 54, as it stands at present, might have the effect of seriously hampering or defeating a prosecution by the Crown in respect, for instance, of falsified accounts or stolen documents. It also prevents the Income-tax Department from prosecuting offences under sections 182 and 196 of the Indian Penal Code. So long as the restriction is imposed that the prosecution under the Indian Penal Code can only be in respect of the statements, returns, accounts, documents, evidence, affidavits or depositions referred to in section 54 of the Income-tax Act, there is no reason why the prosecution should be limited to section 193 of the Indian Penal Code only, as at present.

Clause 10.—This is intended to provide for cases of hardship which occur occasionally.

Clause 11.—The object of this clause is to prohibit the appearance in Income-tax proceedings of certain undesirable persons who, calling themselves Income-tax experts, impose on assessees.

Clause 12.—The period of one month is being extended because it has been found in practice to be insufficient.

Clause 13.—This amendment is being made in accordance with a promise given in the Assembly.

GEORGE SCHUSTER.

SIMLA,
The 26th August 1929.

S. C. GUPTA,
Secretary of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Department.

The following Bill was introduced in the Council of State on the 16th September, 1929:—

C. OF S. BILL No. 7 OF 1929.

A Bill further to amend the Provident Funds Act, 1925, for certain purposes.

WHEREAS it is expedient further to amend the Provident Funds Act, 1925, for the purposes hereinafter appearing; It is hereby enacted as follows:— XIX of 1925.

Short title.

1. This Act may be called the Provident Funds (Amendment) Act, 1929.

Amendment of section 2, Act XIX of 1925.

2. In section 2 of the Provident Funds, Act, 1925 (hereinafter referred to as the said Act), XIX of 1925.—

(*a*) in clause (*a*)—

(*i*) after the words "life insurance," the words "or the payment of subscriptions or premia in respect of a family pension fund," shall be inserted; and

(*ii*) the words "credited in respect of any such subscription or deposit" shall be omitted;

(*b*) in clause (*b*), for the words "or otherwise in respect of a subscription to, or deposit in," the words "a subscription to, or deposit or balance at the credit of an individual account in," shall be substituted; and

(*c*) in clause (*c*), the words "credited in respect of such subscriptions or deposits" shall be omitted.

Amendment of section 8, Act XIX of 1925.

3. Section 8 of the said Act shall be numbered as sub-section (*1*) of section 8 and the following sub-sections shall be added, namely:—

"(*2*) The Governor General in Council may, by notification in the Gazette of India, direct that the provisions of this Act shall apply to any Provident Fund established for the benefit of the employees of any of the institutions specified in the Schedule, or of any group of such institutions, and, on the making of such declaration, this Act shall apply accordingly, as if such Provident Fund were a Government Provident Fund and the authority having custody of the Fund were the Government:

Provided that section 6 shall apply as if the authority making the contributions referred to in that section were the Government.

(*3*) The Governor General in Council may, by notification in the Gazette of India add to the Schedule the name of any public institution he may deem fit, and any such addition shall take effect as if it had been made by this Act."

Addition of Schedule to Act XIX of 1925.

4. The following Schedule shall be added to the said Act, namely:—

"THE SCHEDULE.

LIST OF INSTITUTIONS.

[*See sub-section* (*2*) *of section 8.*]

1. The Pasteur Institute of India, Kasauli.
2. The Calcutta Improvement Tribunal.
3. A Court of Wards.
4. The Indian Central Cotton Committee.
5. The Trustees for the European Hospital for mental diseases at Ranchi.
6. The National Association for supplying female medical aid by women to the women of India."

STATEMENT OF OBJECTS AND REASONS.

The Bill is designed—

(1) to legalise withdrawals from a provident fund for the payment of subscriptions or premia to a family pension fund. The Act already provides that withdrawals may be made for the payment of premia on policies of life insurance, and this extension of the same principle is considered both desirable and logical;

(2) to delete from the definitions of "compulsory deposit", "contribution" and "Provident Fund" words which have recently been interpreted to mean that contributions in a contributory provident fund should bear some relation to the subscriber's subscriptions apart from that of being an addition to them: that, for instance, they should be credited at the same time as subscriptions or bear a particular proportion to them. No justification is found for such a restriction, and it is considered expedient to remove it;

(3) to extend to the provident funds of public institutions whose activities are closely connected with those of Government, provided *inter alia* that Government are definitely in a position to exercise a necessary measure of control, the benefit of being capable of being brought under the protection of the Act. It is considered that the employees of such institutions have an equitable claim to be placed on the same footing as employees of municipalities and the like whose provident funds already enjoy this benefit under section 8 of the Act.

E. BURDON.

L. GRAHAM,

Secy. to the Govt. of India.

SIMLA:

The 29th August, 1929.

The Calcutta Gazette

THURSDAY, NOVEMBER 14, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Department.

The following Bill was introduced in the Council of State on the 25th September, 1929:—

C. OF S. BILL No. 11 OF 1929.

A Bill further to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate.

WHEREAS it is expedient further to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate; It is hereby enacted as follows:—

Short title, extent and application.

1. (*1*) This Act may be called the Hindu Law of Inheritance (Second Amendment) Act 192 .

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, but it applies only to persons who, but for the passing of this Act, would have been subject to the Law of Mitakshara in respect of the provisions herein enacted; and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will.

Order of succession of son's and brother's widow.

2. A son's widow shall, in the order of succession, be entitled to rank next after a widow and before a daughter; and a brother's widow, next after a daughter's daughter and before a sister.

Savings.

3. Nothing in this Act shall—

(*a*) affect any special family or local custom having the force of law, or

(*b*) vest in a son's widow or a brother's widow an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the school of Mitakshara Law by which the male was governed, or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir.

STATEMENT OF OBJECTS AND REASONS.

The Indian Legislature has already passed an Act recognising the rights of such females as are related to the deceased owner by blood. This Bill purports to give similar recognition to such females in the family as are related by marriage. Every Hindu now recognises the hardship to which a predeceased son's widow or a brother's widow is put, when the property passes to distant relations. It is to remedy this hardship that this Bill is being promoted. The principle having already been recognised, there should be no objection to the provisions of the present Bill.

NARAYAN PRASAD ASTHANA.

ALLAHABAD;
The 7th August, 1929.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 21 OF 1929.

A Bill to repeal certain special enactments supplementing the ordinary criminal law.

WHEREAS it is expedient that certain special enactments supplementing the ordinary criminal law should be repealed; It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Special Laws Repeal Act, 192 .

Extent. **2.** The repeal of any enactment by this Act shall have effect in every part of British India in which the enactment was in force at the date of the commencement of this Act, and any notification, made under any law for the time being in force, whereby any such enactment has been declared to be in force in, applicable to, or has been extended to, any such part, shall, on and from that date, be deemed to have been cancelled in so far as it relates to that enactment.

Repeals. **3.** The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 3.*)

Year.	No.	Short title.	Extent of Repeal.
		Regulations.	
1818	III	The Bengal State Prisoners Regulation, 1818.	The whole.
1819	II	The Madras State Prisoners Regulation, 1819.	The whole.
1827	XXV	A Regulation for the Confinement of State Prisoners, Bombay.	The whole.
		Acts of the Governor General in Council.	
1850	XXXIV	The State Prisoners Act, 1850 ..	The whole.
1867	XXIII	The Punjab Murderous Outrages Act, 1867	The whole.
1911	X	The Prevention of Seditious Meetings Act, 1911.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The ordinary criminal law of the land is sufficient to deal with persons guilty of offences against the State. The Indian Penal Code was not in the Statute-book when the Bengal, Madras and Bombay Regulations were enacted. The other three enactments, *viz.*, Act XXXIV of 1850, Act XXIII of 1867 and Act X of 1911 are no longer necessary.

AMAR NATH DUTT.

"PURBACHAL," BURDWAN:
The 31st July, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL NO. 22 OF 1929.

A Bill to secure a share for Hindu widows in their husbands' family property.

WHEREAS it is expedient to secure a share for Hindu widows in their husbands' family property; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Hindu Widows' Right of Inheritance Act, 192 .

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on the day of 192 .

Definition.

2. In this Act, unless there is anything repugnant in the subject or context, "Widow" includes the widow of a person who at the time of his death professed the Hindu, Jaina or Sikh religion.

Widow's right to share in joint family and other property of her husband.

3. (*1*) Where the husband of a widow was at the time of his death a member of a joint family, the widow shall be entitled to such share of the joint family property as her husband would have been entitled to, had a partition taken place in his lifetime, and may sue for partition. This share shall become her absolute property.

(*2*) Where the husband of a widow was not at the time of his death a member of a joint Hindu family, the widow shall take all his property absolutely:

Provided that, should a widow adopt a son to her deceased husband, the personal law of adoption applicable to the widow shall take effect but to the extent of a moiety only of the family property.

Widow's share to be exclusive of *stridhan*.

4. A widow's share under this Act shall be exclusive of her independent personal property or her *stridhan*.

Widow's claim to maintenance to cease on separation of her share.

5. A widow's claim to maintenance from the funds of a joint family shall cease on the partition and separation of her share as provided in this Act.

STATEMENT OF OBJECTS AND REASONS.

The Hindu Law of Inheritance, so far as women are concerned, is unsatisfactory and unjust, and the position of Hindu widows under it is deplorable.

A Hindu woman does not get any share in her father's property—share in the sense of property of which she becomes absolute owner—nor does she get any in her husband's. Widow's right of inheritance is very scantily and sparingly recognised by different schools of Hindu Law. Katyayana says "Let the widow succeed to her husband's wealth"—Mitakshara ii, 2 s. 2 (Mayne's Hindu Law, p. 757). Mayne says: "Originally she (the widow) shared in the general incapacity for inheritance which affected all women..... .....neither Manu, Apasthamba, Vashishtha nor Narada recognise her right as heir though they do acknowledge that of the daughter and the mother," p. 759.

After tracing the growth of widow's rights, Mayne says that Mitakshara arrived at the conclusion that "the widow is entitled to inherit to her husband, if he died separated and not re-united and leaving no male issue, and this rule is now adopted universally except where the authority of Jimuta Vahana prevails," p. 762. He adds: "It is therefor equally settled in Bengal that a widow succeeds to her husband's share when he is undivided just as she would to the entire property of one who held as separated." But even in Bengal the widow of a son who predeceases his father undivided inherits nothing.

Then as a rule "a widow's right as heir does not go beyond the reason for it, *viz.*, her claim to a personal maintenance. And this is the reason why, where a woman inherits to a male, his heirs and not hers take at her death." A widow's right is practically a right to maintenance and no more.

In practice a widow in Hindu society is at the mercy of coparceners. Even though her husband may have amassed the entire wealth of the family and she may, during his lifetime, have lived a life of affluence and luxury, as soon as he dies, the entire property goes to the surviving male members of the

family and she becomes thenceforth only entitled to maintenance, which, as popularly understood, denotes bare means of living.

This state of affairs may have operated tolerably well in days when India was practically isolated from the rest of the world, and the principles and ideals underlying the joint Hindu family system were properly understood and fully acted upon by members of the family. But with the disappearance of those ideals which the orginators of the joint family system had in view, the non-observances of the principles on which this system was orginally based, the gradual and slowly continuing disintegration of the joint family system, the progressive loosening of caste bonds, resulting in gradual disappearance of the homogeneity and the harmony of Hindu society and various other causes—all due more or less to the acceptance of new ideas of life and conduct and the influence of foreign culture and contact—the Hindu Law of inheritance has begun to operate against women with a disastrous effect and their lives are becoming difficult and distressful and often miserable; while the condition of widows has become intolerable and in many cases appalling.

The present Bill proposes to give relief to Hindu widows by giving them a share in family property and making them sole owners of their deceased husband's personal property.

HARBILAS SARDA.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 23 OF 1929.

A Bill further to amend the Indian Majority Act, 1875.

WHEREAS it is expedient further to amend the Indian Majority Act, 1875, so as to attain uniformity and certainty respecting the age of majority; It is hereby enacted as follows:— IX of 1875.

Short title and commencement.

1. (*1*) This Act may be called the Indian Majority (Amendment) Act, 192 .

(*2*) It shall come into force on such date as the Governor General in Council may notify in this behalf.

Amendment of section 3, Act IX of 1875.

2. In section 3 of the Indian Majority Act, 1875, the words beginning with " of whose person or property " and ending with the words " the minor has attained that age " shall be omitted; and in the same section the words beginning with " Subject as aforesaid " to the end of the section shall be omitted. of 1875.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to attain that uniformity which the framers of the Act of 1875 desired to achieve. If it was too big a jump in 1875 to raise the age of majority from 15 years to 21 years, it is not so to-day, 50 years later, to raise it from 18 to 21 years, and that even only in a few cases. Young men at an age as early as 18 years are exposed to so much temptations and dangers that it is extremely necessary that they should be adequately protected. The modern tendency invariably is to increase the period of non-age. This Bill proposes to repeal those provisions of the Indian Majority Act of 1875 which make it possible for a minor to attain majority even at the age of 18 years.

GANGANAND SINHA.

The 26th July, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 26 OF 1929.

A Bill further to amend the Indian Bar Councils Act 1926.

WHEREAS it is expedient further to amend the Indian Bar Councils Act, 1926; It is hereby enacted as follows:— XXXVIII of 1926.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Bar Councils (Amendment) Act, 1929.

(*2*) It shall extend to the whole of British India, where the Indian Bar Councils Act, 1926, is in force. XXXVIII of 1926.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Amendment of section 4, Act XXXVIII of 1926.

2. In section 4 of the Indian Bar Councils Act, 1926 (hereinafter referred to as the said Act), XXXVIII of 1926.—

(*a*) sub-section (*3*) shall be omitted; and

(*b*) the proviso to sub-section (*4*) shall be omitted.

Amendment of section 9, Act XXXVIII of 1926.

3. In section 9 of the said Act,—

(*a*) to sub-section (*3*) the following words shall be added at the end, namely:—

"and shall also provide for uniformity of rights, privileges and robes of advocates"; and

(*b*) sub-section (*4*) shall be omitted.

Amendment of section 14, Act XXXVIII of 1926.

4. In section 14 of the said Act,—

(*a*) in clause (*a*) of sub-section (*1*), the words and figures "subject to the provisions of sub-section (*4*) of section 9" shall be omitted; and

(*b*) sub-section (*3*) shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

The main object of the Indian Bar Councils Act, 1926, was the creation of a united Indian Bar. There are certain provisions in the Act, which stand in the way of creation of a united bar by allowing distinction about rights and privileges among advocates. It is desirable that the Act should be so amended, which will do away with all distinctions among advocates, to facilitate the creation of a united Indian Bar.

"PURBACHAL,"

BURDWAN:

The 31st July 1929.

AMAR NATH DUTT.

S. C. GUPTA,

Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL NO. 27 OF 1929.

A Bill further to amend the Imperial Bank of India Act, 1920, for certain purposes.

WHEREAS it is expedient further to amend the Imperial Bank of India Act, 1920, for certain purposes hereinafter appearing; It is hereby enacted as follows:— XLVII of 1920.

Short title and commencement.

1. (1) This Act may be called the Imperial Bank of India (Amendment) Act, 192 .

(2) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

Insertion of new clauses and sub-section in section 10, Act XLVII of 1920.

2. After clause (*b*) of sub-section (2) of section 10 of the Imperial Bank of India Act, 1920 (hereinafter referred to as the said Act), the following clauses and sub-section shall be inserted, namely:— XLVII of 1920.

"(*c*) that from the date of the promulgation of this Act as amended, the total number of European officers shall not at any period exceed the number employed at the time of amalgamation of the Presidency Banks; and

(*d*) that the London branch shall provide training for at least five Indian graduates from recognised Universities every year.

(3) All future agreements with the Imperial Bank of India shall be subject to the approval of the Legislative Assembly and shall be of temporary nature."

Amendment of section 28, Act XLVII of 1920.

3. In clause (*v*) of sub-section (1) of section 28 of the said Act, after the words "such number of Managing Governors not exceeding two as may be appointed by the Governor General in Council after consideration of the recommendations of the Central Board" the words "of whom one at least shall be an Indian" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

It was expected that a Reserve Bank for India will come into existence and will exercise the privileges now enjoyed by the Imperial Bank of India at present. It will take a few more years till India has her own Reserve Bank under the control of the Government and people of India. Eventually the Imperial Bank of India will have to take place with other Banks in India, and hence it is desired that neither the Government of India nor the Secretary of State should enter into any further agreement without consent of the Legislative Assembly. The Imperial Bank of India Act, 1920, was framed mainly in the interests of its old constituents —the Presidency Banks, and it is desired in the interest of the tax-payers that the special privileges has been so far enjoying should not be abused.

2. A number of minor amendments in the interest of the tax-payers and the Indian public are also made to focus the attention of the authorities of the Imperial Bank to their definite obligations to India and Indians.

B DAS.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 28 OF 1929.

A Bill to remove certain existing disabilities in respect of the power of adoption amongst Hindus.

WHEREAS it is expedient to remove certain disabilities in respect of the power of adoption amongst Hindus; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Adoption Validating Act, 19 .

(*2*) It extends to the whole of British India, provided that the Governor General in Council may, by notification in the Gazette of India, exclude any province from the operation of this Act.

(*3*) It shall come into force on the 1st day of 19 .

Adoption of sons of certain relatives legalised.

2. Notwithstanding any custom, rule or interpretation of the Hindu Law to the contrary, no adoption by a Hindu shall be invalid by reason only that the adoptive father could not have legally married in her maiden state the genitive mother of the adopted son.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to legalise the adoption of the daughter's son, sister's son, mother's sister's son and the like, whose adoptions are at present regarded by British Indian Courts as invalid, amongst the three higher classes of Hindus. This rule of prohibition is based on a fantastic conception, itself the result of an implication arising from a pure metaphor, that the adopted son must be the "reflection" of the natural-born son. Out of this conception a rule came to be gradually evolved that the adopted boy must not be so related to the adoptive father that the latter could not have married his genitive mother in her maiden state. The rule, when so stated, had the effect of excluding from the circle of persons capable of being adopted some of the most eligible relatives like the daughter's son, or sister's son. Consequently, in course of time, attempts were made to evade the rule, and ultimately, by a somewhat forced interpretation of the Smriti texts, the disqualification came to be restricted, for instance in the Bombay Presidency, to the three higher classes of Hindus.

(*See* Ramchandra Krishna Joshi and others *versus* Gopal Dhonoo Joshi and others—I. L. R. 32 Bombay, 619.)

(Gajannan Balkrishna Deshpande *versus* Kashinath Narayan Deshpande—I. L. R. 39 Bombay, 410.)

Even amongst these classes, exceptions have been recognised to this rule, apparently as the result of local customs, *e.g.*, amongst the Brahmans of the Southern Maratha Country the adoption of a daughter's son or sister's son is allowed.

(*See* Vayidinâda *versus* Appu—I. L. R. 9 Madras, 44.)

Likewise, the adoption of a daughter's son has been recognised amongst Brahmans in many parts of the Madras Presidency.

(*See* Sri Vadrevu Viswasundara Row and another *versus* Ryali Somasundara Rao—I. L. R. 43 Madras, 876.)

Many eminent commentators of the texts and also British Indian judges have doubted the propriety of this prohibition, and there are strong grounds in support of the view that, even in ancient times, the texts giving rise to the prohibition were regarded as purely recommendatory. It is, therefore, thought expedient and desirable to remove the restriction altogether, the origin and propriety of which were always doubtful, and to extend the adoptive father's freedom of choice to some of his nearest relatives (such as his daughter's son), who from the viewpoint of natural love and affection may be regarded as most eligible for adoption.

M. R. JAYAKAR.

The 25th June, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 29 OF 1929.

A Bill to declare gains of learning by a Hindu to be his separate property.

WHEREAS it is expedient to remove all uncertainty as to the extent and nature of the right, title and interest, which a member of a Hindu joint family has over property acquired by him by means of his learning and to provide a uniform rule applicable thereto, irrespective of the nature of such learning and acquisition; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Hindu Gains of Learning Act, 1929.

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on the 1st day of January, 1930.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*a*) the expression "learning" shall mean education, whether elementary, liberal, technical, special or scientific, and training of every kind, which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life;

(*b*) the expression "gains of learning" shall mean all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning; and

(*c*) the expression "acquirer" means a member of a Hindu joint family, who acquires the gains of learning.

Gains of learning to be the separate property of the acquirer.

3. Notwithstanding any custom, rule or interpretation of the Hindu Law to the contrary, no property being gains of learning made by the acquirer shall be held not to be his exclusive and separate property—

(*a*) by reason of such learning having been, in whole or in part, imparted to him by any member, living or deceased, of such family, or with the aid of the joint funds of such family, or with the aid of the funds of any member thereof, or

(*b*) by reason of himself or his family having, while he was acquiring such learning, been maintained or supported, wholly or in part, by the joint funds of such family or by the funds of any member thereof.

Saving clause.

4. Nothing in this Act contained shall affect—

(*a*) any decision which may have been passed in any suit or proceeding before the coming into operation of this Act by any Court or other competent authority;

(*b*) any right or liability created under a partition of, or an agreement for a partition of, joint family property, made prior to the commencement of this Act;

(*c*) any right or liability of any party to a suit or proceeding pending at the date of the commencement of this Act;

(*d*) any alienation made of, or charge created over, any property prior to the commencement of this Act by any person other than the acquirer; or

(*e*) any sale made, prior to the commencement of this Act, in execution of a decree.

STATEMENT OF OBJECTS AND REASONS.*

This Bill reproduces what, it is submitted, is the true rule of the Hindu Law, in the matter of individual and personal earnings by the member of a joint family. It derives support from the equitable and liberal spirit which pervades the utterances of the Smriti writers (with almost a solitary exception) on the subject-matter of this Bill and which forms quite a contrast to the narrow views of the latter-day commentators and the decisions based thereon. The opinion of many eminent British Indian Judges, including their Lordships of the Privy Council, who have approached the subject without prepossession, is distinctly in favour of the principle of the Bill. The propriety of conceding to the acquirer the sole and independent right to his gains of learning is not merely a matter of expediency, but a question of natural justice which, in modern times, can hardly be gainsaid by any fair-minded person. The Bill, if passed, will check wasteful, harassing and unrighteous litigation, remove distrust and greatly tend to promote peace and good-will among members of Hindu families. The measure will likewise lead to a profitable employment of capital, that is otherwise locked up in jewellery and in safes, by removing some of the obstacles existing in the present state of the law, which induce a wealthy member of a family to keep his savings in disguised investments in landed property, rather than in an open and easily convertible form.

2. An important result of the proposed Bill will be that it will immensely improve the position of the female members in a Hindu family. The widow and the daughter of the acquirer, often left helpless, will in the absence of male issue, take by inheritance the deceased's gains of learning in preference to distant male members who can, under the present law, lay claim to the same by survivorship.

3. The present rule is archaic. It is based upon a misconception of the true spirit of the Hindu Law and has, in modern conditions of Hindu society, the effect of stagnation. It breeds most wasteful litigation, as is obvious to any one, who has even a cursory acquaintance with reported Indian decisions or the Daily Cause Lists of judicial tribunals. It is necessary that the original doctrine should be revived, which will set the spirit of private enterprise and individual exertion once more free from the trammels imposed in later times.

4. The Bill aims at laying down the law in a progressive spirit suited to modern times, and in terms free from ambiguity. It seeks to remove the grave uncertainty and doubt which hang round the question. The important modification of the existing law, which it seeks to introduce, is to put the gains of special or scientific learning on the same footing as those of ordinary education. There are cogent reasons, in modern conditions of life, for the adoption of such a course. Any other plan must result in impracticable and fanciful distinctions and anomalies. To refer only to one case which is a fruitful source of harassing litigation. The issue is comparatively clear as to cases where the education imparted at the expense of the family funds is a purely elementary one. (Lakshman *versus* Jamnabai, I. L. R. 6 Bombay 225.) It is equally clear where such instruction is in a special branch of education, for instance, training for the I. C. S. (Gokal Chand *versus* Hukam Chand-Nath, L. R. 48, Indian Appeals, p. 162.) But the issue is not clear in cases which fall neither in the one nor in the other category. Such cases are numerous.

5. Under the old law of the Smritis (with possibly the single exception of Katyayana), acquisitions made by means of learning were the exclusive property of the acquirer. (See, *e.g.*, Manu Smriti, Chapter IX, Verse 206, Narada Smriti, Chapter XIII, Verse 6.) There was no distinction drawn between ordinary or special and scientific education, nor between ordinary and extraordinary gains of learning. If, however, the acquisition itself was made with the aid of family funds, it was divisible among the coparceners. Later commentators, however, relying upon the text of Katyayana, have placed restrictions on the right of the acquirer in the gains made by him by means of his learning. According to these later authorities, the gains of science are divisible among the members of the family, if the acquirer was instructed in the science by a member of his family or if, while he was studying the science, he or his family had been maintained by other members of the undivided family. It was only when the learning was acquired from a stranger and while receiving maintenance from strangers, that the gains of science formed the separate property of the acquirer. According to these commentators, whether the learning is ordinary or special, the gains of such learning are devisible if the learning was imparted at the expense of the family or by a member of the family. The Mitakshara does not make any difference between the ordinary and extraordinary gains of learning.

6. The view taken by the Courts with regard to this question has undergone considerable fluctuations. At first it was held that the gains of an ordinary general education, at all events the ordinary gains of such education, were partible, if the education was imparted at the family expense or was received by a person in the enjoyment of a family maintenance. Latterly, however, the tendency of the Courts has been in favour of the opposite view, *viz.*, that the gains of education imparted at the expense of the family are divisible only when the education is in a special branch of science which is the source of acquisition and not the elementary or general education which is the necessary stepping stone to the acquisition of all science. The view taken by the Courts at the present time is opposed to the ancient texts, and is based upon distinctions of an unworkable character which have caused great uncertainty and confusion in their practical application. They place one class of earnings at a great disadvantage. The large majority of people who acquire property by means merely of an ordinary or general education, can treat their gains as their separate property; but the comparatively smaller section of the community, which acquires

* See 1891, Madras Law Journal, p. 139, and 1900, Madras Law Journal, p. 1.

property by means of a special, scientific or extraordinary education, must divide its gains with the other members of the family. There is often great difficulty in working out the distinction drawn between the two classes of cases. What is special or scientific education and what is ordinary or general education is a matter which it is extremely difficult to determine. The standard of education varies in different localities, in different classes and in different families. It is also shifting from time to time. What might at one time have been regarded as extraordinary education becomes ordinary education after the lapse of some years. What might be ordinary education in the case of a wealthy family would be extraordinary education in a family of scanty means. The result is a great uncertainty of the present law. It is impossible for any person who acquires property by his learning to feel any certainty that his earnings will be regarded as his own. The uncertainty is greater if the distinction drawn in some of the texts and decisions between ordinary and extraordinary gains of learning is borne in mind.

7. A state of the law which renders it impossible for the acquirer of property to know whether he can or cannot exercise any control over it, calls for immediate alteration. The desire of a person to keep for himself what he has earned and the disposition to regard such earnings as his exclusive property are so universal that the claim of the acquirer to his acquisitions must be regarded as natural and legitimate. Likewise, the legal recognition of the claim of the acquirer to be master of his own earnings is the strongest impetus to exertion, an incentive to increase his wealth and a means of promoting the progress of the community.

8. The question did not assume any great importance till modern times, for self-acquisitions were comparatively rare. Under the old conditions of life, when the members of a family all lived together in the same place and followed the same occupation, there was seldom any scope for such acquisition. But, under the altered conditions of present-day life, when the joint family is constantly splitting up and the members leave their ancestral home for different places to seek their living by new pursuits, not merely is the strength of the family tie considerably loosened, but the amount of the acquisitions of the individual members is, in the main, determined by the capacity, character and special aptitude of the individual.

9. It cannot be denied that the consequences of the present law are unfair to the acquirer and his widow and female issue. So long as he remains an undivided member of the family, the other members have an equal share in his earnings during his life time, and the acquirer cannot make a gift, *inter vivos* or after his death, out of his acquisitions even to his own daughter or widow, in order to redress the inequalities of the Hindu Law of Intestate succession. The idle members of his family do not act very hostilely to the earner in his life-time, for he can effect a partition, and thereby deprive them of all opportunity of sharing his subsequent earnings. Troubles generally arise after the death of the acquirer, and they affect persons least able to protect themselves. If the acquirer dies leaving a widow and female children only, the children are entitled to nothing, and the widow has a bare claim to maintenance. A more shocking case of injustice can hardly be imagined. The proposed measure will have the effect of raising in some cases at least, the status of women and uplifting them out of a position of helpless dependence in which they are placed by the present law.

10. By depriving a person of control over his earnings, the present law checks the natural impulses to earn and to save. It has also the effect of compelling the acquirer of property to find a means of circumventing the restrictions of the law. It exercises a demoralizing influence upon his character by inducing him to have recourse to dishonest subterfuges like *binami* transactions.

11. Likewise, the present rule is not favourable to the growth of self-reliance among the dependent members of the family. In a rich family, it offers a premium to extravagance, idleness and perpetual discord. Its injustice is manifestly falling. Take, *e.g.*, a case in which a father has three sons and incurs the same expenditure on their education. He sends them all to England to be educated for the I. C. S. One is successful, the other two fail. Of the two who fail, one takes to trade, the other is unwilling to do any work and remains idle. The trader earns a large fortune, which the present law allows him to keep to himself, because his education in England was for the Civil Service and not for trade. But, out of the earnings of the Civilian, two shares are claimed, one by the trader and the other by the brother who has been idle. The trader keeps his own earnings and also takes a share of the Civilian's earnings. Take again a case in which three brothers are given by their father the same education, for the same profession and at the same cost. Though they have had the same start in life, the degree of success attained by them may vary according to the differences of aptitude, character and other advantages, natural or accidental. Is there any reason in this case why the more successful brother should be compelled to share his earnings with his less able brothers? It is not suggested here that the claim of a brother to support and assistance should not be recognised by his more fortunate brother, but the claim should rest upon purely moral sanctions, and should not be invested with any legal recognition. Knowing, as we all do, the great intensity of family ties among Hindus, it would be absurd to contend that, if legal obligations were removed, the moral obligation would cease to be recognised even to the extent to which it prevails among non-Hindu races.

12. There is, likewise, ample basis for the view that the ancient Hindu Law did not regard a person who spent money upon the education of a member of his family as having any legal right to reimbursement or return of the outlay. Ages ago, it was laid down by the Smritis, and it is still the law, that an educated member of the family is entitled to demand a partition at any time and his share is not liable to be debited with even a farthing of the cost of his education, however high it may have been. Nor can the member who has made the outlay compel the member, educated at his expense, to earn or to save or

even to postpone his demand for partition, and it is perfectly true to assert that a member of the family who spends money for another's education has no legal right to any return of the outlay. His expectation of benefit, if any, is a mere moral expectation, and it is neither necessary nor feasible to clothe it with legal sanction without violating the most deep-rooted principles of the Hindu Law.

13. If an educated member of a family, unrestrained by feelings of delicacy, forces a partition as soon as he begins to earn, the family has no legal claim upon him for reimbursement of the outlay made on his education, nor any share in his future acquisitions. It is not, therefore, merely anomalous but unjust that, while in such a case the earning member should be able to keep all his earnings to himself, the educated member who, from feelings of generous delicacy, does not wish to enforce a partition against the other members, but confers benefits upon them during the time they are joint, should, in return for his generosity, be subjected to the penalty of a forfeiture of the greater part of his own acquisitions.

14. The Bill will also have the effect of preventing an inquiry into the character of the education and the means by which such education was imparted. The difficulties of such an inquiry in any suit concerning the property of the acquirer are enormous, especially when it takes place after the death of the acquirer and many years after the completion of his education. In most cases, such an inquiry is very harassing, when conducted at the expense of the estate and with a helpless widow or daughter on the defensive.

15. No fear need be entertained that the present Bill, if passed into law, will lead to the violent break-up of the joint family system, for, while the existing law furnishes the strongest inducement to the educated member to separate himself as soon as he begins to make a respectable income, the Bill, on the other hand, would remove this inducement.

16. The Bill is in conformity with the unquestionable working of the 'great law of property' as Ruskin called it, which obtains in all civilised countries and according to which a man who works for a thing shall be allowed to get it, keep it and consume it in peace.

M. R. JAYAKAR,

The 12th July, 1929.

S. C. GUPTA,

Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 30 OF 1929.

A Bill to regulate the publication of reports of judicial proceedings in such manner as to prevent injury to public morals.

WHEREAS it is expedient to regulate the publication of reports of judicial proceedings in such manner as to prevent injury to public morals; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Judicial Proceedings Regulation Act, 19 .

(*2*) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on the 1929.

Publication of judicial proceedings relating to an indecent matter.

2. It shall not be lawful to print or publish or cause or procure to be printed or published in relation to any judicial proceedings any indecent matter or indecent medical, surgical or physiological details, being matter or details the publication of which would be calculated to injure public morals:

Provided that nothing in this section shall apply to the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceeding or the communication thereof to persons concerned in the proceedings or to the printing or publishing of any notice or report in pursuance of the directions of Court, or the printing or publishing of any matter in any separate volume or part of a *bonâ fide* series of law reports or in any publication of a technical character *bonâ fide* intended for circulation among members of the legal or medical profession.

Punishment.

3. If any person acts in contravention of the provisions of this Act, he shall in respect of each act be liable on summary conviction to imprisonment for a term not exceeding two months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine:

Provided that no person other than a proprietor, editor, master, printer or publisher shall be liable to be convicted under this Act.

STATEMENT OF OBJECTS AND REASONS.

Progressive countries have realised the necessity of preventing the publication of indecent details concerning judicial proceedings, the two outstanding examples being France and Great Britain. The necessity that arises in this behalf is an urgent one particularly in cases where minor children are involved and where sordid details of domestic life have to be exposed in law-courts. This Bill follows generally the lines and language of the British enactment covering the same subject.

DIWAN CHAMAN LALL.

The 30th July, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 31 OF 1929.

A Bill to abolish the punishment of death for offences under the Indian Penal Code.

WHEREAS it is expedient to abolish the punishment of death in British India, which may be inflicted in pursuance of sentences passed under the Indian Penal Code; It is hereby enacted as follows:— XLV of 1860.

Short title, extent, application and commencement.

1. (*1*) This Act may be called the Abolition of Capital Punishment Act, 19 .

(*2*) It extends to the whole of British India, including British Baluchistan, and the Sonthal Parganas.

(*3*) The provisions of this Act shall apply to all persons to whom the provisions of the Indian Penal Code apply.

(*4*) It shall come into force on the 1st January, 1931.

Abolition of capital punishment.

2. Notwithstanding anything contained in the Indian Penal Code whereby Courts are empowered to pass a sentence of death by way of punishment, no Court in British India shall pass such sentence of death for any offence committed in or outside British India, by any person to whom the provisions of this Act apply. XLV of 1860.

Exception.—The provisions of this Act shall not affect the provisions of section 132 of the Indian Penal Code or, of the Indian Army Act, 1911, or any other law or Statute passed either by the Indian Legislature or the British Parliament, under which death penalty can be inflicted, and which affects the discipline or maintenance of His Majesty's military, naval or air forces in India. XLV of 1860. VIII of 1911.

STATEMENT OF OBJECTS AND REASONS.

Capital punishment has been wholly or partly abolished in many of the progressive countries of the world. Australia, Belgium, Denmark, Holland, Italy, Norway, Portugal, Sweden, and a few States in America, have already done away with death penalty. Public opinion in England, and in many other countries is also coming round to the view that capital punishment is a relic of barbarism, and is not suited to the social needs of the present time. The plea that capital punishment acts as a deterrent, and exercises a restraining influence, is not borne out by the experience of modern States.

The arguments in support of the abolition of the death penalty are shortly as follows:—

It demoralises those who inflict it: its harshness has the effect of coarsening the public sentiment. To authorise killing is to tamper with the sanctity of human life; sometimes innocent persons have been sentenced to death, and in such cases no reparation is possible. Science has now proved that murders are often committed under the influence of a frenzy, which is of the nature of a disease, and has to be treated like many other diseases, by proper therapeutic means. To end the life of such criminal may seem to be a short cut; but it has the effect of depriving the culprit of all opportunity of improvement under proper remedial conditions. In times when the dignity of human life was not adequately realised, public conscience tolerated this drastic remedy. But with the growth of a larger perception of the economy of human life, and the need of making the best use of the same, it is necessary that means should be adopted to remove this method of punishment. The principle that punishment for offences should be primarily regarded as a means of correction and reformation of criminals and criminally inclined persons, as also as a means of educating the social conscience of the community against crimes of violence or cruelty makes it imperative under modern conditions that the death penalty for offences should be abolished. The provisions of the Bill are accordingly intended to give effect to the above objects.

The Bill is not intended to affect any Statute of the British Parliament applicable to India; nor does it in any way affect discipline in His Majesty's army, navy, or air force.

GAYA PRASAD SINGH.

The 2nd July, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 32 OF 1929.

A Bill further to amend the Court-fees Act, 1870, for a certain purpose.

WHEREAS it is expedient further to amend the Court-fees Act, 1870, for a certain purpose hereinafter appearing; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Court-fees (Amendment) Act, 192 . VII of 1870.

(*2*) It shall apply only to Ajmer-Merwara.

(*3*) It shall come into force at once.

Amendment of section 7, Act VII of 1870.

2. To clause (*ii*) of section 7 of the Court-fees Act, 1870, the following proviso shall be added, namely:— VII of 1870.

"Provided that, in suits for maintenance by widows, the amount of fee payable under this Act shall be computed according to the value of the subject matter of the suit and such value shall be deemed to be the amount claimed to be payable for one year only."

STATEMENT OF OBJECTS AND REASONS.

Under section 7, clause (*ii*), of the Court-fees Act, 1870, the amount of fee payable in suits for maintenance is computed according to the value of the subject matter of the suit which is deemed to be ten times the amount claimed to be payable for one year. This operates with great hardship on poor widows, who have to sue for maintenance. A widow claiming Rs. 10 a month for maintenance has under the present law to pay court-fees on Rs. $10 \times 12 \times 10$=Rs. 1,200 and then process fees to get witnesses summoned have to be paid in addition, and these fees are also computed on this large sum of Rs. 1,200. Widows who claim maintenance are very poor and they can hardly afford to pay such high court-fee and process fees. They have often, therefore, to forego their right of maintenance and have to live at the mercy of the people, who are under legal obligation to maintain them. In cases, where widows are able to raise money to pay such high fees, they do so on terms which impose very heavy, often unbearable, burdens on them.

Moreover, claims for maintenance by widows are distinguishable from other claims for maintenance and annuities and deserve more considerate treatment.

This Bill proposes to give facilities to widows claiming relief in this respect by reducing the value of the subject matter of the suit from 10 times the amount claimed to be payable for one year, to the amount claimed to be payable for one year only.

HARBILAS SARDA.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 33 OF 1929.

A Bill to make better provision for certain heirs, under Hindu Law, especially with respect to women, regarding their rights of inheritance.

WHEREAS it is expedient to make better provision for certain heirs, under Hindu Law, especially with respect to women, regarding their rights of inheritance; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Hindu Law (Amendment) Act, 192 .

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on and from the day of 192 .

Share of daughter.

2. Notwithstanding any provision of Hindu Law to the contrary, and irrespective of the fact that she changes her religion or that she is married or unmarried, barren or issueless, or with issue, which is male or female, indigent or wealthy, chaste or unchaste, widowed or not, or suffering from disease, distemper, or deformity, curable or incurable, or that there is a custom excluding her from inheritance, every daughter in a Hindu family shall be entitled to inherit the property, ancestral or otherwise, of her father:

Provided that—

(*i*) where he leaves sons or grandsons or great-grandsons in the male line, a daughter shall take only a share equal to half of what she would get, if all the children of the father were sons;

(*ii*) where he leaves a widow, father or mother along with female issue, the latter shall take, out of the share provided for in proviso (*1*) *supra*, only two-thirds, and the remaining one-third shall be taken for life by the widow, father, or mother, or, all together, or such of them as shall be in existence, at the time, and the reversion therein shall be vested in the female issue abovesaid, or failing them, their heirs;

(*iii*) where the property left by the father is an Impartible Estate, or an Estate in which the Law of Primogeniture prevails, or both, the eldest daughter shall succeed to the whole Estate of the father, in cases where he leaves no male issue or widow; and every daughter who does not take the Estate itself, shall, as to rights of maintenance and other rights to properties, be in the same position, as if she were a younger son of the father, except that, in cases where he leaves a son or sons, the daughter or daughters shall have a right to recover, from the holder of the Estate, half of the maintenance, which a younger brother would get, if all the children of the father were sons.

Nature of right taken by daughter.

3. Every daughter, inheriting her father's or mother's property, shall take the same or her share therein, absolutely; and for purposes of inheritance by her heirs, the property shall be treated as her *Stridhanam*, with rights of disposition:

Provided that—

(*i*) in cases where a daughter inherits the whole property of the father, and dies leaving one or more sons or daughters, or both, the share shall pass to her, absolutely, in the proportion of 3 to 1; and in the absence of children, the whole share, and in default of sons, but the existence of daughter or daughters, two shares out of the four, shall pass to the reversioners of the father, and the remaining two shares be taken by the daughter, or daughters together;

(*ii*) in cases where the daughter does not get the whole share of the father, but only a fractional share of a son or sons, as provided in this section, the property, which she so inherits, shall pass absolutely to her sons and daughters, in the proportion of 3 to 1 abovesaid; and in default of daughters, the whole property, which she inherits, shall pass to the sons; and in default of the latter, to her daughters; and in default of both sons and daughters, to her other heirs, but not to the reversioners of her father.

Nature of right taken by widow

4. Notwithstanding any rule of the Mitakshara to the contrary, every widow shall have a right to enjoy, during her life-time, or widowhood (in the event of re-marriage) any share of the property, to which her husband would have been entitled, if a partition had been effected just prior to his death:

Provided that where the husband has left male issue, she shall be entitled, during her life, to a share equal to that of a son.

Order of succession of sister and sister's son.

5. Notwithstanding anything to the contrary in the Mitakshara or Dayabhaga schools of Hindu Law, the sister and sister's son shall rank, in the order of succession, next after the brother's grandson.

Women's right to partition.

6. Notwithstanding anything to the contrary in Hindu Law, a woman shall have a right to claim partition of a share, to which she may be entitled and get the same separated.

Rights of alienation in a joint Hindu family.

7. Notwithstanding anything to the contrary in Mitakshara, a member of a joint Hindu family shall be entitled to alienate family property by way of gift, devise, sale, mortgage or the like with respect to the whole or any portion of his share.

STATEMENT OF OBJECTS AND REASONS.

It is intended by this Bill to extend the scope of the Hindu Law of Inheritance, as at present administered, by giving larger rights to women generally and to the members of a Hindu joint family and also to sister's sons and other heirs. As regards the existing rights of inheritance of women under Hindu Law, there is a large body of public opinion which desires that their position should be improved, especially that of daughters and widows. I have thought over the matter and consulted friends on the subject; and I must confess that while the desire to improve the position of daughters, sisters, sister's son and widows, to mention only a few of the heirs under Hindu Law, is strong in them, there is not only no consensus of opinion, as to what should exactly be their position and status, with respect to succession, but there is a great diversity and divergence of opinion. Some say that the giving of a share to women and a right to partition will tend to create disruption of the Hindu joint family system, and therefore suggest that only the value of the share should be given to them. Some are of opinion that, if the value of the share be given to them the husband, the father-in-law, or other male relations, as the case may be, of the daughter, the widow, and other female heirs, will have an incentive to appropriate it to themselves, in times of need. They, therefore, suggest the advisability of giving them an annuity and making it to enure for the benefit, if necessary, of their issue, wholly, or until their education is completed, or their marriage is over, or majority is attained. I had therefore to draft Bills, from time to time, on different considerations. At last, I considered it better to provide a share to these heirs.

One object I kept in view throughout was, not altogether to ignore the claims of reversioners, who seemed to me to be unpopular in the eyes of some of the present-day Hindus, with respect to their rights of succession. They were allowed rights on the ground that it is they who have, in the absence of nearer heirs, to promote the spiritual benefit, by offering oblations and *pinda* to the propositus, in cases where he dies issueless. My chief aim in not ignoring their claim is to give some importance to the offer of *pinda* and oblation, which most of the Hindus believe would tend to the spiritual benefit of the propositus.

NOTES ON CLAUSES.

In clause 2 of the Bill I provide for the daughter a share in the property of the father. My reason for this is, that, I consider, it is only just, for she shares, with sons, the same blood and has as good a place in her parent's affections as the sons.

As the Law at present stands, under the Mitakshara School of Hindu Law, if one of two undivided brothers dies first, leaving a daughter, and afterwards the surviving brother dies childless, the estate will pass to the collateral relations and not to the daughter of the first brother. But, under the Dayabhaga School, which obtains in Bengal the daughter would, at once, take the share of her deceased father. In this case, and circumstances such as these, the administration of Law, so far as the daughters governed by the Mitakshara

School is concerned, is felt to be a great hardship. I have therefore practically suggested that, in this respect, the law under Mitakshara should be brought into line, with that under Dayabhaga, and in those parts of the country where the Mitakshara prevails she should be allowed a definite share. The idea of allowing female issue a share in her father's estate is not altogether foreign to Hindu Law. If I remember aright, Yagyavalkya advocated a share to daughters.

The clause makes it clear that daughters shall have a share, irrespective of any circumstances, in which they may be placed. My reason for this is, there is a great variance in this matter in different parts of the country; and I consider these differences should not be kept up in the present conditions of things. There are certain castes, in certain parts of India, where there are local or family customs, by which a daughter is excluded from succeeding to the widow of her father.

In Bengal, incontinence will prevent a daughter taking the estate of her father. In other parts of India, virtue in the daughter is not considered essential for her to inherit; and it is not enforced in the case of any female heir other than a widow or wife.

Again, in a decision reported in the Bombay High Court Reports, it was stated that a daughter should be excluded from inheritance, in case she suffered from an incurable disease, on the authority of *Smriti Chandrika*, which based its views as to rights of daughters, upon religious principles; but the Madras High Court declined to accept this view. Similarly, with regard to other matters mentioned in the proviso, there is a great divergence of opinion. I consider that, in this matter, she should be given a right, unfettered by any conditions.

Proviso 1 allows daughters no equal share with sons, but only a moiety of their share. The reason for this distinction is that while both the son and daughter share their parent's blood equally and are equally high in the affections of their parents, one continues in the family and perpetuates the lineage of the father, the other passes out of it into a different family. On this account, I considered that a differentiation in the matter of the share was proper.

Proviso 2 deals with the cases of the rights of a widow, mother or father of a person to whose properties daughters succeed along with the sons or by themselves, when the father is devoid of male issue. Considering that a father is bound to maintain them irrespective of the possession of assets from their ancestors, it is only right they should not be altogether neglected by their grandsons (so far as the parents of the father are concerned) and by their sons (so far as their own mother or step-mother is concerned). I, therefore, thought it right, they should get a portion of the share provided for the daughters for their lives, with a reversion of the same to the daughters or on their default to their heirs.

Proviso 3 places the eldest daughter in the same position as the eldest son, so far as her right to succession to Impartible Estates, and to estates in which the Law of Primogeniture prevails, or in both; and in all cases where the father leaves no sons, it gives to the other daughters the same rights as to the younger sons left by the father, whose property is taken by the eldest son alone.

Clause 3 gives daughters in the share provided for her, absolute powers, except that in case where she inherits the whole property of her father, it is, in a certain proportion, divided between her sons and daughters as it is considered just, that the daughters also should get a small share in her mother's property, inherited by the latter, from her father, along with her sons. The son is necessarily provided with a larger share, as he gives *pinda* to his maternal grandfather, which daughters cannot do. In case of the failure of issue, or in case of the existence of only daughters, on the principle that those who give *pinda* to the maternal grandfather should be also benefited, I provided reversion of the whole share in the former case, and a half share in the latter case.

In cases where she has brothers and gets a fractional share, I provided that her children, and in their absence, her heirs, shall take her share and not the father's reversioners, as the father has male heirs to attend to his spiritual needs.

Clause 4 deals with the case of the widow's right. Under Dayabhaga school of law, a widow is entitled to the share of her husband for life. This is, of course, due to the fact that the law, as administered under Dayabhaga school, treats each member of an undivided family as a tenant in common and not as a joint tenant. Under Mitakshara school of law, the case is different; and a widow is entitled to maintenance from members of a joint Hindu family, though she succeeds to her husband's share, where he leaves self-acquired or separate property. It is proposed in this clause to follow the provisions of Dayabhaga in all cases. I know that there is a difference of opinion, on this matter, among those, who follow the rules of the Mitakshara. Whatever be the view taken the maintenance now allowed to the widows under Hindu Law as administered in parts other than Bengal, where Dayabhaga law prevails, varies from the full income of the share of the husband to a trifle, at the discretion of Courts. In order to give effect to her right to the full share of her husband's income, I provided that the share of the husband should be given to her for life, as in Bengal.

Proviso to clause 4 gives a widow, in cases where the husband leaves male issue, a share equal to that of a son for her life. I think it is only reasonable that the mother who was the mistress of the house before her husband's death, should be treated equally with a son in the matter of a share, though such share be limited for her life.

Clause 5 deals with the cases of sister, and sister's son. Both these are very hard cases deserving of great consideration.

In the case of a sister and her position as heir under Hindu Law, it has a chequered career. Mayne in his Hindu Law stated as follows: "She is said to have no religious efficacy whatever, as she cannot offer any oblations to her brother. Benares writers, while accepting her as a *sapinda*, by reason of

affinity, do not make her a *gotrasapinda*, as she passes into a strange *gotra* immediately on her marriage.. A passage in *Sancha* and *Lachita* seems to affirm the right of a sister to succeed to her brother. Nandapandita and Balambhatta interpret the text of the Mitakshara, which gives inheritance to brethren, as including sisters, so that brothers take first and then sisters. The Bombay High Court, though it accepted this interpretation, does not fix her position in the line of heirs. But this is said to be opposed to the spirit of the Benares Law. Her position now stands as follows. In Bombay her right to succeed to the brother is beyond dispute. In Bengal and Benares, she has no right. In Madras, her right was recognised a few years ago and she is placed, even where she is recognised as heir, very far away from daughters and brothers." This, I consider, is very unjust.

Similarly with regard to sister's son, the same high authority says that "he has suffered and been suffering grave injustice in the matter of his right of inheritance. Among the *Bandhus* who are omitted by the Mitakshara, the sister's son has had the severest struggle for existence, having even run the gauntlet of an adverse decision from the Privy Council. His right has always been recognised under Bengal Law. She is expressly named by the Dayabhaga. In the provinces governed by Mitakshara (not including Western India) it was supposed that she had no claim and this view was put forward almost unanimously by Text writers, Pandits, and Judges. The decision of the Bengal High Court was afterwards followed by the Madras High Court and in the High Court of the North-Western Province." In the circumstances I thought it would be only right to advance their ranks in the order of succession.

Clause 6 deals with the right of women to claim partition. "In former times," according to Mayne, again "when partitions were made, interests of women were much better provided for, than at present. When partition took place at father's death, the mother and the grandmother were each entitled to a share equal to the sons and the unmarried daughters each to a fourth share. If sons chose to remain undivided, they had a right to do so. Women could never compel a division. This still obtains where the father leaves male issue." To me it looks unreasonable and unjust to give woman a right to division and yet place restrictions thereon. I therefore provided for this right.

In spite of all this, the sister and sister's son were recognised by decisions to be *mere* heirs. This is hardly fair. They deserve to be brought much nearer than they are at present in the matter of their rank in the order of succession. What is after all the difference between a brother and sister, except it be their sex ? While one continues in the *gotra*, the other goes out of it. The same thing may be stated with regard to the brother's son and sister's son. So far as the blood relationship is concerned, one is as near to the propositus as the other. In the case of the sister's son he is in a position to attend to the spiritual necessities of his maternal uncle. I therefore think it is only right that these two heirs, the sister and her son should be promoted and allowed to rank at least after the brother's grandson. I, therefore, suggest that these be ranked as provided for in the order of succession.

Clause 7 deals with the right of alienation by a member of a joint Hindu family to dispose of his share of property as he likes. At present, an alienation by him is invalid, unless he was divided or had declared, in an unequivocal manner, his intention to divide or separate (*vide* 31 M. L. J. 55 P. C.; 43 I. A. 15). If he so likes, just before he devised his property, he could make this declaration and then his disposition is held to be valid. In these circumstances, there is no meaning in saying that a coparcener has no right to devise property, when he can do it by means or merely making an unequivocal declaration.

V. V. JOGIAH.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September 1929:—

L. A. BILL NO. 36 OF 1929.

A Bill further to amend the Indian Penal Code.

WHEREAS it is expedient further to amend the Indian Penal Code; XLV of 1860.
It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Penal Code (Amendment) Act, 192 .

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on the first day of April, 192 .

Insertion of new section 317A in Act XLV of 1860.

2. After section 317 of the Indian Penal Code the following section XLV of 1860. shall be inserted, namely:—

Punishment of putative father as abettor of offence by mother under section 317.

"317A. Whenever the mother of an illegitimate child, below the age of twelve years, shall expose or leave such child in any place with the intention of wholly abandoning such child and is convicted under section 317 of this Act, or of murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure, the putative father of the child shall be charged with abetment of the offence for which the mother has been accused or convicted, and shall be presumed to be guilty until the contrary is proved, and he shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

STATEMENT OF OBJECTS AND REASONS.

Man-made laws have at times been extremely harsh on women folk. A woman often suffers special obloquy and even gets outcasted if she becomes a mother through free love while in unmarried or widowed state. To save herself from social ostracism often she has recourse to exposure of the child of the illicit love on the roadside. At times the poor mother has not the wherewithal to support the child and social ostracism forces her to abandon the child. The law—man-made law it is in every case—provides for exemplary punishment to the unfortunate woman, but the real culprit—man who seduced and abandoned the helpless girl and the innocent child in their deplorable state—goes unpunished. The present Bill, if passed into law, will hold the putative father equally guilty for the murder of the innocent child, and he shall be liable to receive equal punishment with the mother. Incidentally such a deterrent law will minimise seduction of helpless widows and maidens, and illicit love will be a forbidden fruit.

B. DAS.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929 :—

L. A. BILL No. 39 OF 1929.

A Bill further to amend the Indian Electricity Act, 1910, for certain purposes.

WHEREAS it is expedient further to amend the Indian Electricity Act, 1910, for certain purposes hereinafter appearing; It is hereby enacted as follows :— IX of 1910.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Electricity (Amendment) Act, 192 .

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on the 1st day of January, 1929.

Amendment of section 37, Act IX of 1910.

2. In clause (*b*) of sub-section (*2*) of section 37 of the Indian Electricity Act, 1910, after the words " regulate the publication of notices " the words " in any newspaper published in the area of supply, or, in absence of the same, in a newspaper published in the province, " shall be inserted. X of 1910.

STATEMENT OF OBJECTS AND REASONS.

Section 37 of the Indian Electricity Act, 1910, empowers the Governor General in Council to make rules to regulate generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of the Act, and the Indian Electricity Rules of 1922 were framed for that purpose. Applicants for an electric licence to supply in any area of supply are required to advertise the draft licence in three successive issues of the same newspaper published or circulated in the proposed area of supply. This loophole " circulated in the proposed area of supply " leads to many abuses. Advertisements have appeared in newspapers published outside the province even. That was not the purpose of the Act or Rules. With the attainment of provincial autonomy, it should be only natural to expect that such notices should be advertised in newspapers published in the town or in the province. The provision in the rule " or in such newspapers as the Local Government may approve " covers the second alternative.

I may add here that the Bill, if passed into law, will necessitate an amendment of Rule 13, clause 3, to the following effect:—

In Rule 13, clause 3, omit " circulated " after the words " in at least three successive issues of same newspapers published."

B. DAS.

S. C. GUPTA,
Secy. of the Legislative Assembly.

The Calcutta Gazette

THURSDAY, NOVEMBER 21, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929 :—

L. A. BILL No. 24 OF 1929.

A Bill to finally recognize and place beyond doubt the validation of inter-marriage of Arya Samajists.

WHEREAS it is expedient to finally recognize and place beyond doubt the validation of inter-marriage of Arya Samajists; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Arya Marriage Validation Act, 192 .

(*2*) It shall apply to the whole of British India and shall apply to all cases that may come up for decision after the passing of the Act whether the marriage in question has taken place before or after the passing of this Act.

Definition.

2. For the purpose of this Act "Arya Samajist" shall mean a person who—

(*a*) is a member of any Arya Samaj; or

(*b*) is a member of the family of, or a relative dependent on, or a person under the guardianship of, any person mentioned in clause (*a*);

(*c*) within five years of the passing of this Act or within one year of his marriage (whichever period expires last) executes a written document expressing himself to be an Arya Samajist or in terms equivalent thereto; and includes the members of the family of, relatives dependent on, and persons under the guardianship of, such a person.

Explanation.—Where the document mentioned in clause (*c*) is registered under the Indian Registration Act, 1908, it shall be conclusive and no evidence shall be admissible to prove that any person mentioned in clause (*c*) is not an Arya Samajist. XVI of 1908.

Validation of inter-marriage of Arya Samajists.

3. No marriage of an Arya Samajist shall be invalid by reason of the couple having belonged to different castes or sub-castes of Hindus or to different religions, any law or usage or custom to the contrary notwithstanding.

STATEMENT OF OBJECTS AND REASONS.

As the Arya Samajists who form quite an appreciable number of the Indian population conscientiously believe that the present caste system is not in accordance with their scriptures, the Vedas, and as according to the law as administered at present marriages among couples belonging to different castes or sub-castes are considered invalid and there is a fear of the issue of such marriages being declared illegitimate and as quite a large number of such marriages have taken place and more would have taken place had there been no such obstacles, it is necessary to have a law which would give relief to the Arya Samajists. Hence the above short law is proposed.

MUKHTAR SINGH.

S. C. GUPTA,
Secy. of the Legislative Assembly.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 37 OF 1929.

A Bill further to amend the Special Marriage Act, 1872.

WHEREAS it is expedient further to amend the Special Marriage Act, 1872; It is hereby enacted as follows:— III of 1872.

Short title. **1.** This Act may be called the Special Marriage (Amendment) Act, 192 .

Amendment of preamble to Act III of 1872. **2.** In the preamble to the Special Marriage Act, 1872 (hereinafter referred to as the said Act), III of 1872.

(*i*) after the words "a form of" the word "civil" shall be inserted;

(*ii*) after the words "for persons" the words "domiciled in British India" shall be inserted; and

(*iii*) the words "who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion" shall be omitted.

Amendment of section 2, Act III of 1872. **3.** In section 2 of the said Act,—

(*i*) the words "neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion" shall be omitted; and

(*ii*) after the words "between persons" the words "domiciled in British India" shall be inserted.

Amendment of clause 2, Second Schedule to Act III of 1872. **4.** In the Second Schedule to the said Act, for clause 2 in the Declarations to be made by the bridegroom and the bride, respectively, the following shall be substituted, namely:—"I am domiciled in British India".

STATEMENT OF OBJECTS AND REASONS.

The laws of all civilised countries provide for the contract of civil marriage by persons who may so desire. The disability to contract such marriages in India is merely territorial and there is no reason why a similar law should not be enacted for this country. The enactment, if passed, would be merely optional and leaves intact the existing personal laws which control the performance of marriages.

The reasons which have induced me to draft this Bill are as follows:—

Sir Henry Maine as Law Member of the Governor General's Council had introduced a Civil Marriage Bill; but, as the Government were then immediately concerned with an enactment to prescribe a civil form of marriage applicable only to Brahmos by whom they were moved for the enactment of a secular law to enable them to contract marriages, its provisions were so limited in the Bill which became Act III of 1872.

In 1909, the late Mr. Bhupendra Nath Basu and later on Dr. H. S. Gour had also introduced a similar Bill, but its provisions were eventually transformed into those of Act XXX of 1923.

The Baroda State have recently introduced a Civil Marriage Bill; while the Laws of other Indian States are understood to provide for the performance of such marriages. The advantages of the measure, if enacted, are obvious. The Bill would enable persons subject to polygamous marriage laws to contract monogamous marriages and removed the inequality in the matter of divorce. It would elevate the status of women. These benefits have already been assured to the Hindus, Buddhists, Sikhs and Jains by Act XXX of 1923, and there is no reason why the benefit that that Act confers upon the communities named should not be extended to other communities who might as regards succession be equally brought under the law enacted in the Indian Succession Act. A provision to this effect has not been inserted in the Bill, but it can be added at a later stage if public opinion favours it. The absence of a civil marriage law lends itself to perjury and

artificial conversions which it is the policy of the State to prevent. It was so observed by Sir Henry Maine who advocated the establishment of a non-sectarian marriage law in order to prevent the abuse resulting from such conversions (Proceedings Imperial Council, dated 27th November, 1868, pp. 498, 499).

To sum up then the advantages of such marriages are as follows:—

1. Such marriages are recognised and provided for by the laws of all civilised countries, and it is possible to contract such marriages outside the territorial limits of India. The disability is, therefore, purely territorial, and patriotic Indians are naturally anxious to remove all such disabilities from their way.

2. The Bill is monogamous in its policy and would result in introducing monogamy where polygamous marriages alone are at present possible.

3. It would prevent artificial conversions resulting from the exigency of marriages.

4. It would give a wider field for selection and thus ensure a happier domestic life.

5. It would introduce a greater sincerity in marriages by dispensing with the subscription of a declaration which many desiring to marry under the existing Act have to subscribe to not without considerable mental reserve.

6. It would tend to the unification of the Indian races without at the same time interfering with their personal religion.

7. It would give the wife a more assured position and entitle her to exercise her right of divorce which may not be possible if married under her personal law.

8. And being merely optional it trenches upon no one's rights, but merely prescribes a form to those who, while desiring to escape from the thraldom of their religious ritual, do not wish to renounce it.

It is believed that, with the growing strength of the national sentiment, such a Bill has become a public desideratum, and it has therefore been decided to re-introduce it in the Central Legislature.

M. R. JAYAKAR.

S. C. GUPTA,

Secy. of the Legislative Assembly.

The Calcutta Gazette

THURSDAY, NOVEMBER 28, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Assembly Department.

The following Bill was introduced in the Legislative Assembly on the 26th September, 1929:—

L. A. BILL No. 35 OF 1929.

A Bill to amend the Mussalman Wakf Validating Act, 1913.

WHEREAS doubts have arisen regarding the applicability of the Mussalman Wakf Validating Act, 1913, to wakfs created before its enactment; VI of 1913.

AND whereas it is expedient to resolve such doubts;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Mussalman Wakf Validating (Amendment) Act, 192 .

Amendment of section 1, Act VI of 1913.

2. In sub-section (*2*) of section 1 of the Mussalman Wakf Validating Act, 1913, after the words "It extends to the whole of British India" the following words shall be added, namely:— VI of 1913.

"and shall apply to all wakfs whenever executed."

STATEMENT OF OBJECTS AND REASONS.

Muhammadan law permits a perpetual bequest in the form of a *Wakf-al-aulad*, that is a bequest for the benefit of the testator's descendants. As such, it contravenes the law against perpetuities as enacted in section 14 of the Transfer of Property Act, and section 114 of the Indian Succession Act. A doubt was cast on this doctrine by the Privy Council in several cases in which their Lordships held such bequests illegal as obnoxious to the rule against perpetuities (*Abdul Fata* v. *Rasamaya* 22 C. 619 P.C.: *Abdul Fagur* v. *Nizamuddin* 17 B. I. P. C.: *Mujib-u-nissa* v. *Abdul Rahim* 23 A. 233 P.C.: *Muhammad Munawar Ali* v. *Razia Bibi* 27 A. 320 P. C.). Mr. Jinnah introduced a Bill which became Act VI of 1913 restoring the validity of such *Wakfs*.

But in several cases since decided this Act is held to be inapplicable to wakfs created before its enactment (*Khajeh Soelhman* v. *Salimullah* 49 C. 820 P. C.: *Rahimunissa* v. *Shaik Manik Jan* 19 C. W. N. 76: *Mahomed Bukht* v. *Dewan Ajman Reja* 43 C. 158: *Amir Bibi* v. *Azizabibi* 39 B. 563).

As Act VI of 1913 was merely declaratory of the validity of such wakfs, it was understood that it would apply equally to all wakfs whether created before or since that enactment. But as the Courts have held otherwise, this Bill is framed to give that Act retrospective operation.

It is apprehended that the Mussalman Wakfs Validating Act (VI of 1913) was not intended to introduce a change in the old law being enacted, to restore the old rule. This Bill will, if passed, carry out its intention by resolving a doubt resulting from recent cases.

A. H. GHUZNAVI.

The 8th July, 1929.

S. C. GUPTA,
Secy. of the Legislative Assembly.

The Calcutta Gazette

THURSDAY, DECEMBER 19, 1929.

Part VI

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

Legislative Department.

The following Bill was introduced in the Council of State on the 23rd September, 1929:—

C. OF S. BILL No. 9 OF 1929.

A Bill to prohibit the export of Cattle.

WHEREAS it is expedient to remove preventible causes for the shortage of agricultural cattle and reduction of the milk supply in British India; and whereas the overseas trade in cattle has appreciably contributed to the said shortage of agricultural cattle and the said reduction of the milk supply; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Prohibition of Export of Cattle Act, 192 .

(*2*) It shall extend to the whole of British India.

(*3*) It shall come into force on the 19 .

Definition.

2. "Cattle" shall mean and include cows, bulls, bullocks and buffaloes as well as their calves.

Offence.

3. Whoever exports or carries coastwise cattle from British India or carries such cattle by road, rail, water or air within British India for the purpose of such export or carrying coastwise and whoever abets the commission of any of the said acts shall be guilty of an offence under this Act and shall be punished with imprisonment which may extend to six months or with fine or with both.

Forfeiture.

4. On conviction for an offence under this Act the cattle in respect of which the offence is committed shall be forfeited.

Offence cognisable and bailable.

5. All offences under this Act shall be cognisable and bailable and shall be triable in the manner prescribed for warrant cases by a Magistrate of the first class.

STATEMENT OF OBJECTS AND REASONS.

India is mainly an agricultural country. Cattle are essential to the agriculturist and milk to the great bulk of the population. A large number of cattle has of late been exported every year for the purposes of the trade. This has naturally appreciably raised the prices of cattle and milk. The scarcity of milk is a serious hardship upon the people in general, but its evil results have been most felt in the case of infants. The great rise in infant mortality during recent years has been distressing. The object of this Bill is to combat these growing evils to some extent by penalising export trade in cattle.

GOVIND DAS.

JUBBULPORE;

The 29th July, 1929.

L. GRAHAM,

Secy. to the Govt. of India.